

**FINAL REPORT
OF THE
SENTENCING POLICY STUDY
COMMITTEE**

November 2004

***Final Report of the
Sentencing Policy Study Committee***

Senator David Long, Chair

Members of the Legislative Council and the Indiana General Assembly;

The Sentencing Policy Study Committee respectfully submits the following final report. It presents thoughtful, deliberate and meaningful criminal sentencing recommendations for Indiana. During a time of budget constraint there could have been a temptation to allow fiscal issues to drive the public policy on criminal and correctional code revision. Instead, we are pleased that the concern for public safety served as the primary and most important guiding principle for the development of each recommendation, as well as the importance of understanding the causes of criminogenic behavior. Each committee member was committed to sound public policy based upon research findings, expert testimony, documented promising practices and survey information that promote safety and protection of our Hoosier citizens.

It is clear from the testimony received, that Indiana faces many of the same challenges as other states. The difference that continues to distinguish Indiana from many other states has been the professionalism and commitment of the judges, prosecutors, public defenders, probation officers, Department of Correction staff and the community service providers, all of whom adhere to the Indiana Constitution's mandate that the criminal code be founded on the principles of reformation and not vindictive punishment.

Public safety must be measured in relationship to the role and responsibilities of each component of the criminal justice and correctional system. The committee members recognized the inter-relationship of community-based intermediate sanctions, incarceration and the reintegration process for offenders being released from custody. Special attention was given to ensure that the proposed legislation affecting these components focus and contribute to a unified and effective manner to provide safety for the public while assigning appropriate sanctions for the offender.

The Committee members believe that the recommendations in this report can, over time, save the State of Indiana substantial tax dollars in its correctional system while still protecting public safety. However, these savings are dependent upon a significant investment in, and advancement of, local correctional systems that promote community based sanctions and programs.

David Long, Chair
Sentencing Policy Study Committee

SENTENCING POLICY STUDY COMMITTEE

Final Report

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I. EXECUTIVE SUMMARY

I. Executive Summary

□ *Legislative Action and Membership of the Committee*

The Sentencing Policy Study Committee originated with the passage of HEA 1145 (Public Law 140-2003) that was signed into law by Governor Frank O'Bannon. The committee met eleven times between September 2003 and November 2004 and developed 11 recommendations for consideration by Governor Joseph E. Kernan and the Legislative Council.

The statutory requirements for the Committee included the following:

- (1). Determine the proper category for each felony and misdemeanor, considering the nature and degree of harm likely to be caused by the offense, including whether it involves property, irreplaceable property, a person, a number of persons, or a breach of the public trust, the deterrent effect a particular classification may have on the commission of the offense, the current incidence of the offense in Indiana, and the rights of the victim;
- (2) Recommend structures to be used by a sentencing court in determining the most appropriate sentence to be imposed in a criminal case, including any combination of imprisonment, probation, restitution, community service, or house arrest;
- (3) Determine the impact of the effect of suggested sentencing structures on the Department of Correction and local facilities with respect to both fiscal impact and inmate population;
- (4) Review community corrections and home detention programs for the purpose of standardizing procedures and establishing rules for the supervision of home detainees; and establishing procedures for the supervision of home detainees by community corrections programs of adjoining counties;
- (5) Determine the long range needs of the criminal justice and corrections systems and recommend policy priorities for those systems;
- (6) Identify critical problems in the criminal justice and corrections systems and recommend strategies to solve the problems;
- (7) Assess the cost effectiveness of the use of state and local funds in the criminal justice and corrections systems;
- (8) Recommend a comprehensive community corrections strategy;

(9) Propose plans, programs, and legislation for improving the effectiveness of the criminal justice and corrections systems; and,

(10) Evaluate the use of faith-based organizations as an alternative to incarceration.

To meet these requirements, the Committee initially devoted four meetings to discuss the following components of the criminal justice and correctional systems:

- Probation;
- Community Corrections;
- Community diversionary efforts such as drug courts and crisis intervention team policing for offenders with mental health needs;
- Incarceration at a state facility;
- Transition from a state facility;
- Parole; and,
- Mandatory sentencing requirements

□ ***Findings of Prior Study Committees and Selected National Research Findings on Sentencing and Correctional Issues***

The initial meetings focused on understanding the sentencing statutes and trends that contribute to an increase in prison populations as well as some best practices and research findings that would guide the Committee with evidence based decision-making. In this regard, the meetings reviewed the work of two prior related sentencing policy commissions (The 1990 Indiana Correction Advisory Committee and the 1996 Sentencing Policy Evaluation Commission). Those study groups developed a total of 35 recommendations to improve the criminal justice and corrections system. Over 85% of the recommendations were accomplished or achieved some degree of implementation.

The Committee received information about recidivism that was published by the U.S. Department of Justice in June 2002 that indicated 67.5% of all state prisoners released from incarceration in 1994 were re-arrested for a new offense within three years. The report provided additional demographics that included the incidence of various attributes of this population including age of the offender at time of arrest, number of prior arrests, number of prior types of offenses resulting in incarceration, length of sentence and length of time after release prior to the re-arrest. It was noted that Indiana does not maintain a recidivism rate, but instead utilizes a “return rate”. The return rate indicates the number of

offenders re-admitted to the Department of Correction rather than a recidivism rate that portrays subsequent arrest.

Information also from the U.S. Department of Justice was presented that indicates that the most advanced community re-entry is oriented around preparing an offender for return to the community at the intake part of the incarceration.

□ ***Sentencing Trends***

Information provided through testimony and through prepared briefings for the Committee indicates that nationally, between 1990 and 2002, state prison populations almost doubled from 650,000 prisoners to 1.2 million prisoners. Between 1993 and 2004, Indiana's prison population increased from 14,221 to 23,760.

Information also was received that indicated the national incarceration rate for 2003 at midyear was 429 per 100,000 residents, while the Indiana rate of incarceration was 363. This data while well received, did not alleviate the population concerns expressed by the Commissioner of Correction. The offender population growth rate per year since 1993 is approximately 4.5% resulting in a situation in which the population remains significantly over rated bed capacity as of October 2004.

Representatives of the Vera Institute of Justice from New York City were invited to provide testimony to the Committee about the manner in which sentencing statutes and practices have been modified in Kansas and Minnesota. Those two states were identified as states that have made significant strides in the development of community corrections and analysis of sentencing statutes and trends. An in-depth discussion about the management of community corrections in North Carolina provided the Committee with information about issues and options on the structure and management of community corrections

□ ***Significant Information and Findings that Impact Admissions to the Department of Correction***

In considering the Indiana incarcerated offender population, the Committee viewed the prison population as a function of three basic variables, each with several sub-variables:

- Admissions;
- Releases; and
- Bed Capacity

During the period of time between 1996 through 2004, there was a 70% increase in male admissions to the Department of Correction, while there was a 165% increase for female admissions during that same time period. When analyzing those admissions, the Committee considered the various reasons why an offender is admitted to the Department of Correction, including probation and parole violations (both technical and with new commitments). An analysis of these reasons indicate that:

- Technical probation violations for male offenders have increased from 5.2% in 1996 to 8.4% in 2004;
- Technical probation violations for female offenders have increased from 6.6% of all admissions in 1996 to 7.5% of all admissions in 2004;
- Technical parole violations for male offenders have increased from 6.7% of all admissions in 1996 to 9.7% of all admissions in 2004;
- Technical parole violations for female offenders have decreased from 8.4% of all admissions in 1996 to 7.6% of all admissions in 2004;
- Probation violations with a new commitment for male offenders have decreased from 3.0% of all admissions in 1996 to 2.7% of all admissions in 2004.
- Probation violations with a new commitment for female offenders have increased from 1.6% of all admissions in 1996 to 18.1% of all admissions in 2004;
- Parole violations with a new commitment for male offenders have increased from 2.1% of all admissions in 1996 to 5.6% of all admissions in 2004; and,
- Parole violations with a new commitment for female offenders have increased from 1.3% of all admissions in 1996 to 3.8% of all admissions in 2004.

This information led the Committee to discuss what could be done to divert more first time offenders from subsequent criminal behavior. One response discussed was to provide Courts with additional sentencing flexibility. Currently, the ability to suspend a sentence of a second time felony offender under certain circumstances is prohibited by statute. These offenders may be committed to the Department of Correction, especially if a community does not have a full array of sanctions and services available or local capacity of these services is inadequate to manage the offenders.

An increase in the number of successful probation and/or community corrections completions obviously provides for improved public safety and decreases prison admissions. The fact that community correction services and programs are able to address the needs of offenders who are

transitioning from state incarceration also was seen as a valuable service that could improve public safety. In this regard, community corrections programs were viewed not only as an important “front-end” service but as a crucial “step-down” or reintegration process service as well. The Committee also was presented with information that the 2004 Indiana combined “return rate” was 28.25%, with a return rate of 30.18% for males and 15.31% for females

During several of the Committee meetings and the work groups meetings, the issue of consistent risk assessment that would transcend each component of the criminal justice and corrections systems was discussed. There was general consensus that the Risk Assessment Task Force of the Indiana Offender Reintegration Project was the appropriate forum to collaborate with representatives from the Courts, Community Corrections Programs and the Department of Correction to develop consistency in the risk assessment process.

**❑ *Significant Information and Findings that Impact Releases
from the Department of Correction***

In looking at releases from the Department of Correction, the number of releases in comparison to admissions for males continues to indicate more admissions than releases. For females, this trend has somewhat stabilized. In 2004, that difference for males was 1332 and for females was 108.

Influencing the number of releases is the average length of sentence and the average length of stay for offenders committed to the Department of Correction. The average length of sentence for Murder, Class A, B, C and D felonies generally has increased over the past several years, with some intermittent annual exceptions. The average length of stay for Class B, C and D felonies continue to decrease, but again, with some intermittent annual exceptions. The most notable explanations for this are the opportunity for offenders to obtain earned credit time and be released onto a community transition program as authorized by state statutes.

The Committee also found it noteworthy that of all releases from the Department of Correction to probation and parole (excluding discharges due to expiration of sentence and turning over offenders with warrants from other jurisdictions to wanting authorities), approximately 50% of the males return to probation supervision. For females, the percentage is 55%. A trend was noted that the percentage of female offenders returning to probation supervision is down from 60% about 8 years ago.

Also impacting releases is sentence modifications. There has been a decrease in sentence modifications when viewed as a percentage of all releases, decreasing from 17.6% in 1993 to 2.9% of all releases in 2004.

▣ ***Bed Capacity of the Department of Correction***

The Department of Correction provided information that as the offender population increases, the percentage over rated bed capacity at the correctional facilities increases as well, because the number of useable beds in the Department has been relatively static for some time now. Since 1994, 6894 male and female beds have been added to the department.

▣ ***Indiana's Criminal Sentencing and Corrections Survey***

The Indiana Criminal Justice Institute developed *Indiana's Criminal Sentencing and Corrections Survey* to assess practitioner perspectives on Indiana's sentencing laws and policies. This assessment includes the purpose of the criminal justice and corrections systems, the availability of sentencing options, and the needs of offenders held in state correctional facilities. Five groups of criminal justice professionals were surveyed totaling 681 potential respondents, including 258 judges with criminal case experience, 90 elected prosecuting attorneys, 156 appointed public defenders, 120 adult chief probation officers, and 56 directors of adult community correction programs funded by the Community Corrections Grant Act. Response rates ranged from a low of 54% for Public Defenders to a high of 91% for Community Correction Program Directors. Overall 78% or 528 of 681 respondents surveyed returned a completed questionnaire. Section VI of this report provides a complete presentation of information from the survey.

▣ ***The Committee Work Groups***

Upon receiving baseline and updated information from professionals in the affected areas, the Committee organized into three work groups. These work groups were:

- Policy and Systems Development;
- Criminal Code Revision; and,
- Transitional Services.

The focus of the work groups was to provide a forum for more in-depth analysis of policy issues by functional area, and share the responsibility of developing draft recommendations that would meet the requirements of the statute. During the work group process the United State Supreme Court decision in *Blakely v Washington* was published.

This landmark decision became the primary focus of the Criminal Code Revision Work Group. The decision held that:

“A judge may not increase a defendant’s penalty beyond that which would be available **“solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.”** Any fact (other than the fact of a prior conviction) necessary to enhance a penalty beyond that which is authorized solely by the jury verdict or guilty plea must be provided beyond a reasonable doubt, if not formally admitted by the defendant. When a sentencing system imposes an upper sentencing threshold, creating an effective maximum sentence, any facts necessary to go above that threshold are subject to jury determination, as are the standard elements of the offense. Thus, the use of judicially determined facts to increase a sentence beyond an effective maximum sentence violates defendants’ right to a trial by jury”. (*Blakely v Washington*, 542 U.S.____; 124 S.Ct. 2531; No. 02-1632 (June 24, 2004))

□ **Promising Practices**

The Committee acknowledged the development of promising practices initiated by local communities and the Department of Correction. Special emphasis in these promising practices has been placed on evidence-based decision-making and outcome measures. These promising practices include:

- Marion County Mental Health Diversion Program;
- Indiana Offender Reintegration Project;
- Community Assessment Accountability Restoration and Reintegration Services; and,
- Allen County Community Corrections Program

❑ ***Recommendations and Preliminary Drafts***

In all, the Committee voted on 11 recommendations. These recommendations are:

- 1) Development of a “Purpose Statement” for the criminal code to provide a clear statement of purpose and philosophy that promotes public safety and the use of appropriate sanctions based upon principles of reformation. The “Purpose Statement” emphasizes the importance of policy integration and cooperation among the various components of the criminal justice and correctional system while setting forth the means and goals to be considered in establishing criminal penalties and imposing sentence without creating a cause of action or superceding any statute, and not being used in any litigation to obtain any form of relief. The Committee approved PD 3532, which is a proposed purpose statement bill draft (Appendix 1).
- 2) Statutory changes to the criminal code that require the State prove the existence of aggravating circumstances beyond a reasonable doubt before a person convicted of a felony may receive a sentence greater than the presumptive, unless the person has one or more prior un-related convictions; 2) requires the defendant be provided with notice of the State’s intention to seek a sentence greater than the presumptive; 3) requires a jury to reconvene to hear evidence on aggravating circumstances if a person is convicted of a felony in a jury trial; and 4) permits a defendant to waive their right to have a jury determine the existence of any aggravating circumstances. The Committee approved PD 3597, which is a bill draft incorporating these proposed changes (Appendix 2).
- 3) Development of a consistent method for the Courts, County Sheriff or Community Corrections Program to award and deprive time-based credit;
- 4) Extend recognition and support to the work of the Risk Assessment Task Force of the Indiana Offender’s Reintegration Project as the authoritative forum to develop common risk assessment processes for use among the various components of the criminal justice and corrections system;

- 5) The expansion and promotion of alternative institutional placements, including without limitations, work release, electronic monitoring and transitional housing as intermediate sanctions that would be accessible to each Court with criminal jurisdiction, as well as the support and use of other technology to assist in monitoring offenders in the community so as to enhance public safety and reduce admissions to the Department of Correction;
- 6) The clarification of the existing statute to permit the Court to order execution of all or part of a probationer's suspended sentence if a probationer has violated a condition of probation. This ability would provide greater flexibility to the Court to manage offenders safely in the community and thereby decrease commitments to the Department of Correction. The Committee approved PD 3042 which is a bill draft incorporating these proposed changes (Appendix 3).
- 7) Modify the reinstatement fees for driving offenses by the Bureau of Motor Vehicles and/or empower Courts to modify or waive the fees so as to decrease the likelihood that drivers who cannot afford the incremental reinstatement fees do not eventually become incarcerated only for that offense;
- 8) Amend the existing statute that allows a Court to order an offender on home detention to wear a monitoring device to transmit the location of an offender at all times. The Committee approved PD 3673 which is a bill draft incorporating these proposed changes (Appendix 4).
- 9) The modification of the statute to permit a Court to hold a new probation hearing and modify a probationer's conditions of probation at any time during the probationary period. The Committee approved PD 3040 which is a bill draft incorporating this proposed change (Appendix 5).
- 10) Amendment of the existing statute to require a jury to determine whether a person is a repeat sexual offender if a jury tried a person. The present statute requires the Court to determine whether a person is a repeat sexual offender if the person received a bench trial or a trial by jury. The Committee approved PD 3041 which is a bill draft incorporating this proposed change (Appendix 6).
- 11) The use of alternative institutional placements as both a "step up" and "step down" process.

□ **Witnesses and Testimony**

Excluding public comments, 31 witnesses testified before the committee.

II. ESTABLISHMENT AND PURPOSE OF THE COMMITTEE

II. Establishment and Purpose of the Committee:

A. Legislative Action:

House Enrolled Act 1145 that subsequently became Public Law 140-2003 was approved by the Indiana General Assembly during the 2003 session and subsequently was signed into law by Governor Frank O'Bannon. The Sentencing Policy Study Committee was established through this authority with the mandate to evaluate sentencing laws and policies as they relate to the:

- (1) Purposes of the criminal justice and corrections systems;
- (2) Availability of sentencing options; and
- (3) Inmate population in Department of Correction facilities.

The committee was required to accomplish the following:

(1) Evaluate the existing classification of criminal offenses into felony and misdemeanor categories. In determining the proper category for each felony and misdemeanor, the committee shall consider, to the extent they have relevance, the following:

- The nature and degree of harm likely to be caused by the offense, including whether it involves property, irreplaceable property, a person, a number of persons, or a breach of the public trust.
- The deterrent effect a particular classification may have on the commission of the offense.
- The current incidence of the offense in Indiana.
- The rights of the victim.

(2) Recommend structures to be used by a sentencing court in determining the most appropriate sentence to be imposed in a criminal case, including any combination of imprisonment, probation, restitution, community service, or house arrest. The committee shall also consider the:

- Nature and characteristics of the offense;
- Severity of the offense in relation to other offenses;
- Characteristics of the defendant that mitigate or aggravate the seriousness of the criminal conduct and the punishment deserved for that conduct;
- Defendant's number of prior convictions;
- Available resources and capacity of the Department of Correction, local confinement facilities, and community based sanctions; and
- Rights of the victim.

(3) The committee shall include with each set of sentencing structures an estimate of the effect of the sentencing structures on the Department of Correction and local facilities with respect to both fiscal impact and inmate population.

(4) Review community corrections and home detention programs for the purpose of:

- Standardizing procedures and establishing rules for the supervision of home detainees; and
- Establishing procedures for the supervision of home detainees by community corrections programs of adjoining counties.

(5) Determine the long range needs of the criminal justice and corrections systems and recommend policy priorities for those systems.

(6) Identify critical problems in the criminal justice and corrections systems and recommend strategies to solve the problems.

(7) Assess the cost effectiveness of the use of state and local funds in the criminal justice and corrections systems.

(8) Recommend a comprehensive community corrections strategy based upon:

- A review of existing community corrections programs;
- The identification of additional types of community corrections programs necessary to create an effective continuum of corrections sanctions;
- The identification of categories of offenders who should be eligible for sentencing to community corrections programs and the impact that changes to the existing system of community corrections programs would have on sentencing practices;
- The identification of necessary changes in state oversight and coordination of community corrections programs;
- An evaluation of mechanisms for state funding and local community participation in the operation and implementation of community corrections programs; and
- An analysis of the rate of recidivism of clients under the supervision of existing community corrections programs.

(9) Propose plans, programs, and legislation for improving the effectiveness of the criminal justice and corrections systems.

(10) Evaluate the use of faith-based organizations as an alternative to incarceration.

The Committee was instructed to submit its report to the Legislative Council and the Governor no later than October 31, 2004.

In order meet its statutory requirements the Committee met eleven times beginning in September 2003 and ending in October 2004. The meetings were held at the State House in Indianapolis.

B. Members of the Committee:

Honorable William Crawford
State Representative

Honorable David Matsey, Judge
Starke Circuit Court

Honorable Luke Messer
State Representative

Todd McCormack Chief,
Hendricks County Probation

Honorable Glenn Howard
State Senator

Tanya Walton Pratt, Judge
Marion County Superior Court

Sheila Hudson, Exec. Dir.,
Allen County Community
Corrections Program

Honorable Judith Proffitt, Judge
Hamilton Circuit Court

Steve Johnson, Exec. Dir.,
Prosecuting Attorneys Council

Evelyn Ridley-Turner, Commissioner
Department of Correction

Joe Koenig/Robin Tew*
Executive Director
Criminal Justice Institute

Honorable Randall Shepard
Chief Justice
Indiana Supreme Court

Larry Landis, Exec. Dir.
Public Defender's Council

Honorable James Williams, Judge
Union Circuit Court

Honorable David Long
State Senator

Note: Richard P. Good, Jr. participated on the Committee at the request of the Chief Justice

* Served during their term as Executive Director of the agency

Support for the Committee:

Micah Cox, Indiana Criminal Justice Institute

James M. Hmurovich, Consultant

Andy Hedges, Legislative Services Agency

K.C. Norwalk, Legislative Services Agency

III. FINDINGS OF PRIOR STUDY COMMITTEES

III. Findings of Prior Study Committees:

A. Indiana Correction Advisory Committee:

On July 1, 1990, the Indiana Corrections Advisory Committee submitted a final report to the Governor on a “Long Range Plan for Indiana’s Criminal Justice System”. The Committee had been established to fulfill the mandate of House Concurrent Resolution 99 passed in the 1988 session of the Indiana General Assembly. The resolution had been passed in response to the alarming growth in Indiana’s prison population. The Committee was instructed to develop a long-range plan to examine existing criminal justice systems relative to their ability to address anticipated offender population increases and recommend ways to ensure effective and efficient criminal justice systems that maximize resources without jeopardizing public safety. Specific requirements included:

- Identify areas where coordination and cooperation between the executive and judicial branches of government must be improved to ensure effective administration of the criminal justice system;
- Evaluate the effectiveness of existing community corrections programs with respect to the diversion of offenders from the department of Correction;
- Identify opportunities for expansion of community diversion programs;
- Consider the desirability of amending the criminal code to encourage alternate sentencing programs;
- Determine the feasibility of converting one of the state’s mental hospitals to a correctional institution for offenders with severe alcohol, drug or other mental health problems;
- Consider the feasibility of prohibiting the incarceration of misdemeanants in state correctional facilities; and,
- Determine whether community based alternatives to institutionalization, including probation services are overlapping and duplicative in nature.

This Committee adopted 22 recommendations. Of these recommendations, 3 were either not achieved (numbers 11, 16 and 17), or there has not been any action taken to achieve them. The recommendations are summarized below:

Item	Recommendation	Status
1.	Offenders be given an incentive to complete constructive programs through earned credit time	Incentives have been implemented for completion of constructive programs (IC 35-50-6-3.3)
2.	All offenders participate in a mandatory graduated re-entry program before release into the community	This has been an on-going process since the Department of Correction was one of nine states that received a technical assistance grant from the National Institute of Corrections to develop model practices. This remains a focus of community corrections programs as well a goal of the Community Transition Program
3.	Mentally retarded inmates to be housed separately from the general prison community and that a survey be conducted to determine the prevalence of mental illness in the prison setting.	Indiana University currently is conducting a study regarding the prevalence of mental illness within the Department, as well as the practices and the formulary used to treat the mentally ill offenders. Offenders who are MMRD are typically assigned to special needs unit if appropriate. Additional staff training is provided to assist in managing and addressing the needs of the mentally ill offenders

4.	Conversion of an existing facility to one for the express purpose of housing offenders with acute and chronic mental health needs.	The psychiatric unit at the Westville Correctional Center was closed and mentally ill offenders now are assigned to the New Castle Correctional Facility. Some dangerous and disruptive mentally ill also are assigned to the "Residential Treatment Unit" at Wabash Valley Correctional Facility. This is a nationally recognized program that involves the gradual return of conforming mentally ill offenders to the general population
5.	Work programs which will employ all employable offenders be developed through the Division of Industries and Farms for all facilities under the direction of the Department of Correction	The number of prison industry jobs (PEN Products) has been increased to approximately 9% of the total adult offender population
6.	The Department of Correction develop educational mission statements for academic, vocational and occupation training programs administered by the Department	These "purpose" or "philosophy" statements have been developed as a component of the offender assignment process and are in the process of departmental approval
7.	The Departments of Mental Health and Correction pursue additional funding for the expansion of the Felony Diversion Program	The Department of Correction is funding six new and two existing forensic

	administered by the Division of Addiction Services, Department of Mental Health	diversion programs through the community corrections grant process. The Mental Health Court in Marion County is funded through the Community Corrections Program. FSSA facilitated the receipt of federal funds for the residential component of the Lake County forensic diversion project. A study of program effectiveness is underway
8.	The base integer for misdemeanor housing be increased	The county misdemeanor funding formula was changed under HEA 1766 in 1996 in which funding was increased from \$2.3 million to \$4.1 million. Simultaneously misdemeanor commitments were prohibited to the Department, effective 7-1-99
9.	The Department of Correction notify the probation department of the sentencing court prior to the offender's release to probation under the split sentence arrangement and that additional materials be forwarded to the receiving court	Policies exist that provides for the notification of the probation department of an offender's release, and the forwarding of information to the Court. This process is not always achieved and in some situations

		less information is provided to the probation department than what is requested
10.	Statewide coverage of the Community Corrections Program, standardization of programs including residential units, and revisions in local board composition	There are now 67 counties participating in the community corrections program. Standardization efforts have been seen in residential services and evidenced-based development of day reporting
11.	Statewide probation subsidies	Not Achieved
12.	Establishment of case managers in the Court systems with criminal jurisdictions	Lake, Marion, Allen and St. Joseph counties have case managers managing direct-committed clients. The Department of correction encourages case management as a component of "What Works" training, initiated in 1998
13.	Development of a standard Pre-sentence Investigation Report form	Completed
14.	A review of local criminal justice expenditures be conducted	Completed at least in part by the State Court Administrator's Office
15.	Training be provided through the Legislative Services Agency be augmented with a presentation on the criminal justice system and local finance	This training will be incorporated into the Orientation for New Legislators conducted by the Legislative Services Agency

16.	Data gathered by probation staff and Sentencing Consultants under the Sentencing Resource Center be routinely shared	No Known Action Taken
17.	The cash, in lieu of bond system be examined and that the courts' non-use of the court administered bail program be examined	No Known Action Taken
18.	The establishment of an offender population forecasting model governed by a Forecasting Coordinating Committee	The Department of Correction manages an offender population forecasting model that maintains a margin of error of less than 2%
19.	Additional funding be made available to conduct criminal justice research to aid in making legislative and policy decision	Limited funding has been made from both the State general Fund and federal funds from the U.S. Department of Justice. Financial support has been obtained for the 1996 Sentencing Policy evaluation Committee and the current Sentencing Policy Study Committee
20.	No changes in the current ability to suspend criminal sentences	There have been changes since 1990 concerning the ability to suspend criminal sentences. In 2001 suspension was made available for certain drug offenses
21.	The lowering of presumptive terms for C and D felony sentences from 5 to 4 years and from 2 to 1 ½ years respectively	Completed

22.	Research should be conducted to determine whether Indiana has a disparate sentencing pattern throughout the state from county to county and court to court. These research findings should guide future discussions regarding sentencing guidelines in Indiana	There have not been any appropriations to date to conduct this research
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Source: "A Long Range Plan for Indiana's Criminal Justice System", 1990

B. The Sentencing Policy Evaluation Committee:

On October 31, 1996, the Sentencing Policy Evaluation Committee submitted its final report to the Governor. The Committee was established through a grant from the Edna McConnell Foundation's State Centered Program. The grant was awarded to Indiana in order to help achieve a balanced correctional system. The grant focused on means to devise and implement a comprehensive strategy for reform geared toward developing policy-making structures, improving sentencing and correctional policies and practices, expanding the availability and use of non-incarceration sanctions and improving the political climate to support rational policies.

The Committee issued 13 recommendations. Of these recommendations, 2 were not achieved (numbers 3 and 12), or there has not been any action taken to achieve them (number 12). The recommendations are summarized below:

Item	Recommendation	Status
1.	Undertake a collaborative effort to evaluate the current probation risk instrument, refine it where appropriate and adapt it for use with community correctional program offenders and post release (parole) clients	A risk assessment instrument has been updated by the Indiana Judicial Center for use by probation officers. The Indiana Offender Reintegration Project has established a Risk Assessment Task Force to coordinate the

		efforts among all criminal justice and corrections components.
2.	Identify funding to study the impact that the Community Corrections Grant Program has had on the criminal justice/corrections system	Only internal departmental reviews have occurred; no statewide effectiveness study has been done
3.	Explore options regarding the disbursement of criminal fines in order to benefit local criminal justice systems	This option has been explored, attempted and failed; it requires a change to the Indiana Constitution
4.	Support existing information and technology initiatives, including a) the Criminal History Record Improvement Project, the State Court Administrators Automated Case Management Project and the Automated Fingerprint Identification, b) efforts by the Department of Correction to re-engineer the Offender Information System, automation of the victim notification system and to develop a community corrections information system, c) efforts of the Indiana Sheriffs Association to develop and extend the Jail Link System to all county detention centers and jails, and d) efforts of the Prosecuting Attorneys Council to extend the Prosecutors Information System (PROSLINK) to all 92 counties	The Criminal Justice Institute has provided significant funding for all the identified systems and substantial progress has been made. Within the information system for the Department of Correction, victim-witness notification programming has been upgraded so automatic “flags” are initiated in appropriate circumstances and a web based search is available

5.	Develop a state wide resource directory listing community sanction programs and referral agencies	No comprehensive statewide resource directory has been developed
6.	Maintain and enhance facility based transition programs as resources allow	This effort has been re-engineered to focus on community based facilities to provide these services
7.	Continue on-going dialogue between the Department of Correction and probation departments to ensure the routine flow of information on offenders released from the Department to probation and that pre-sentence investigation investigations be completed and provided to the Department on all committed offenders	Dialogue is on-going; some gaps in communication exists, but improvement has been noted
8.	Develop a systematic process to a) educate local elected officials about community sanctions, sentencing goals, b) related normative values including proportionality, equity, parsimony and humane treatment and c) for local community corrections advisory boards and staff	A Community Corrections liaison was identified through a personal services contract to discuss the potential of non-participating community corrections counties to become participants; on-going training and seminars are conducted; most notably, "What Works" training
9.	Engage the public in dialogue and educational efforts that focus on a)	A Department of Corrections

	the distinction between violent and non-violent crime, the role of probation and prison and the intermediate sanction, as well as the offender screening, monitoring and accountability process when offenders are non-compliant, b) development of a strategic educational plan and c) the assumption of the lead role by the community corrections advisory boards to use multi-media education and information materials	Speakers Bureau has been initiated but presentations are sporadic
10.	Develop an opinion poll about the public's attitude on crime and sentencing options with the results being widely distributed	The Sentencing Policy Study Committee and the Criminal Justice Institute initiated developed a survey for criminal justice and correctional professionals
11.	Develop a method to maintain a locally managed running record of restitution comparing the amount ordered and the amount collected	These accounts are audited by the State Board of Accounts
12.	Develop a research project for universities to study sentencing practices in Indiana with funding obtained from private foundations	Not achieved
13.	Appoint a committee by the Criminal Justice Institute's Board of Trustees to continue the work of the Sentencing Policy Evaluation Committee	Both the Criminal Law Study Commission and the Sentencing Policy Study Committee successors to the work of the Sentencing Policy Study Committee

Source: "Final Report of the 1996 Sentencing Policy evaluation Committee"

C. Relevant Research Findings:

Testimony and information received by the Committee suggests that research based evidence exists for several key components of correctional policy. Included in these selected findings are the following:

1. In June 2002, The U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics published a special report entitled "Recidivism of Prisoners Released in 1994". The authors of the study were Patrick Lanagan, Ph.D and David J. Levin, Ph.D. The study included the re-arrest, reconviction and re-incarceration of 272,111 former inmates for three years after their release in 1994. This represented two thirds of all the prisoners released in the United States that year and included 15 states: Arizona, California, Delaware, Florida, Illinois, Maryland, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, Oregon, Texas and Virginia. The study indicated:

- Within three years from their release date in 1994, 67.5% of the prisoners were re-arrested for a new offense.
- The most likely time an offender will be re-arrested for a new offense is within 12 months following their release date. The cumulative total for the first 12 months was 44.1%. Within the first six months it was 29.9%, within 12 months it was 44.1%, within 24 months it was 59.2% and within 36 months it was 67.5%.
- Over 80% of the offenders under the age of 18 were re-arrested, compared to 45.3% of those 45 years and older.
- The most common attribute that high rate of re-arrest offenders have is that they were in prison for a crime that generally is thought of as "crimes of money". This includes burglary, larcenists, motor vehicle thieves, possessors/sellers of stolen property, possessors and sellers of illegal weapons and robbers. By contrast, many of those with the lowest re-arrest rates were in prison for crimes generally thought of as not being motivated by desire for material gain. This group included persons convicted of homicide, rapists, others sexual assaulters, and those convicted of driving under the influence.
- The number of times an offender was arrested prior to the prison term is a good indicator of whether the offender will continue to commit crimes after release. For example, offenders with one prior arrest accounted for only 6.9 percent of all releases in 1994. On the other hand, offenders with 7-10 prior arrests accounted for 20.9 percent of all releases in 1994.

- The study was clear that the longer the prior arrest record, the greater the likelihood that the recidivating prisoner will commit another crime soon after release.
- Recidivism rates did not differ significantly among those prisoners released after serving six months or less (66%), those released after 7-12 months (64.8%), those released after 13 to 18 months (64.2%), those released after 19 to 24 months (65.4%) and those released after 25-30 months (68.3%).

2. The percentage of prisoners released to the community that are unemployed in the legitimate labor market after one year is approximately 60% according to the U.S. Department of Justice research cited in the article “When Prisoners Return to the Community: Political, Economic, and Social Consequences”, by Joan Petersilia, in the November 2000 issue of “Sentencing and Corrections”. In Indiana, the Offender Information System does not capture employment data for parolees so we must use the data cited here.

3. The most advanced community re-entry program for offenders would be oriented around preparing offenders for return to the community at the intake part of the incarceration. This is according to research funded by the U.S. Department of Justice for a report published October 10, 2002 by Faye S. Taxman, Ph.D., Douglas Young, M.S., James M Byrne, Ph.D., Alexander Holsinger Ph.D., and Donald Anspach, Ph.D., entitled “From Prison Safety to Public Safety: Innovations in Offender Reentry”.

IV. SENTENCING TRENDS

IV. Sentencing Trends:

A. Sentencing Trends:

Between 1990 to midyear 2002, state prison populations almost doubled from 685,000 to more than 1.2 million. (*Prisoners and Jail Inmates at Midyear 2002, Paige M. Harrison and Jennifer Karberg, Bureau of Justice Statistics, U.S. Department of Justice, April 2003*). The Indiana adult male prison population has increased significantly the past 12 years according to the chart below:

Year	Adult Male Prison Population	Adult Female Prison Population	Total
1993	13428	793	14221
1994	14010	823	14831
1995	14842	879	15721
1996	15638	944	16582
1997	16484	1065	17549
1998	17419	1133	18552
1999	18356	1275	19631
2000	18457	1374	19874
2001	19108	1468	20576
2002	19869	1556	21425
2003	20850	1726	22576
2004	21916	1844	23760

(Note: All population information is for July 1 of each year)

The incarceration rate for all state inmates nationally, and for Indiana inmates for the past eleven years were:

Year:	National Incarceration Rate (a)	Indiana Incarceration Rate (a)
1994	356	258
1995	378	275
1996	394	287
1997	410	342
1998	423	321
1999	434	324
2000	432	335
2001	422	341
2002	427	348
2003	429 (b)	363 (b)
2004	n/a	n/a

(a) Inmates with a sentence of more than one year, per 100,000 residents

(b) At midyear

The U.S. Department of Justice reports that between 1995 and 2001, the percent of sentenced state inmates by major crime group was:

Crime Group	1995	2001
Violent	46.5%	49.3%
Drug	22.9%	19.3%
Property	21.5%	20.4%
Public Order (a)	8.7%	10.8%
Other	.4%	.2%

(a) Includes weapons, drunk driving, court offenses commercialized vice, morals and decency charges, liquor law violations and other public order offenses.

The same report indicates that between 1995 and 2001, the major crime groups increased as a percentage of the total growth by the following:

Crime Group	Percentage Growth
Violent	63%
Drug	15%
Property	02%
Public Order	20%

Further investigation reveals that the number of violent offenders accounted for 64% of the total growth among male inmates and 49% among female inmates. Public order offenders accounted for another 21% for male inmates and 16% of the growth among female inmates. The growth attributed to drug offenders has decreased from 1995 to 2001, in that drug offenders accounted for 13% of the total growth among female inmates and 15% of the growth among male inmates. Property offenders accounted for 22% of the growth among female inmates, while the number of male inmates decreased by 200 during that time period.

According to the graphs below, the adult male offender population in Indiana has increased by approximately 4.5% from 1993 through 2004. The adult female population in Indiana has increased by approximately 8.1% or almost double that of the male population, during the same period of time.

The most often explained reasons for this population increase are:

- There are more admissions than releases on an annual basis;

- An increase in the number of criminal sentence enhancements that increase the length of incarceration or add new crimes;
- The employment of additional law enforcement personnel that leads to a greater number of arrests and therefore convictions;
- More reliable forensic evidence gathering and testing techniques that identify criminals more clearly;
- The decrease in the number of offenders receiving sentence modifications has decreased (from 17.6% in 1992 to 3.8% in 2004), thereby decreasing the number of offenders released from incarceration; and,
- The number of mandatory and non-suspendable sentences continues to increase thereby requiring Courts to commit more offenders to the Department of Correction.

The recidivism rate for adult offenders is another source of intake for the Department of Correction. Nationally, the recidivism rate for adult offenders is 67.5% based upon the information presented below. The U.S. Department of Justice studies the individual releases of over two thirds of the inmate releases from state correctional facilities and tracks them for three years. The last major study completed was for inmates released in 1994. Indiana does not have the ability to track offenders as extensively as the federal government due to limitations in accessing the national databases for arrests and convictions. Indiana therefore tracks a “return rate”. A “return rate” is defined as an offender who has been released from the Indiana Department of Correction and is subsequently returned with a new commitment or parole violation

**V. SIGNIFICANT INFORMATION AND
FINDINGS THAT IMPACT COMMITMENT
RATES TO THE DEPARTMENT OF
CORRECTION**

V. Significant Information and Findings that Impact Admissions to the Department of Correction:

A. Introduction:

The Committee schedule was established in a manner that assessed the various factors that influence and impact admissions to the Department of Correction. On July 1, 2004, the Department of Correction was 55.9% over rated bed capacity for males and 51.3% over rated bed capacity for females. *(Note: These rated bed capacities are calculated on the total offender population on 07-01-04 of 21,916 males and 1844 females and a rated bed capacity of departmental beds for males of 14,058 and 1219 for females. That rated bed capacity does not include county jail beds or private contract beds. If private beds are added to the rated bed capacity, the Department was 48.9% over rated bed capacity for males. If private beds and county jails are added, the rated bed capacity for males was 31.9% and for females was 39.8%)*

A basic analysis of population growth and trends indicates that there are three major factors that impact the adult offender incarceration population. These factors are:

- Admissions to the Department;
- Releases from the Department; and,
- The Rated Bed Capacity or Design Capacity of the Department's facilities.

Throughout testimony to the Committee as well as discussions in the work groups, a common statement or implication was that if more could be done to assist first time offenders to succeed and avoid a subsequent criminal offense, then public safety would be well-served, and incarcerated offender populations could be decreased. Therefore, significant research was completed for the Committee to assess the type of offender admissions and the manner in which offender releases occurred from the Department of Correction.

Though not specifically stated, the implication was that if a percentage of probation, parole and community corrections violations could be avoided through a more uniform array of community sanctions that included probation supervision, electronic monitoring, work release and county jail incarceration, then perhaps less violators would be committed to the Department of Correction. A secondary implication was that if such services as mental health counseling, housing, employment training and job placement services, based upon consistent risk and needs assessment processes could be more consistently available to each

criminal court, then admissions to the Department of Correction could be reduced as well.

To assist in the forecasting of the incarcerated offender population, the Department of Correction developed an offender population simulation tool named “Prophet” that has been accurate within 2% since 1992. It is conceptually designed around the movement of individual offenders into, through and out of correctional populations the Department defines. The elements used in the model include detailed information regarding:

- 1) The current offender population;
- 2) Admissions for the previous year;
- 3) Releases for the previous year;
- 4) Admission totals for the past 10 years;
- 5) Parole admissions, releases, current population and length of sentence

The tool traces the progress of individual offenders along feasible outcomes until the offender exits the system. By accumulating the experience of a large number of cases across simulated time, the tool replicates the performance of Indiana’s correction system and projects the future course of that system.

Indiana, like the majority of states, has experienced budget constraints that have required a re-thinking of public priorities. Difficult decisions between public safety and public education have provided an impetus to view this situation as an opportunity to re-evaluate the effectiveness of sentencing laws. To facilitate a national perspective of this issue, the Vera Institute of Justice was requested to provide testimony to the Committee. The testimony focuses on the manner in which Kansas, Minnesota and North Carolina have emerged from similar situations with a new perspective on sentencing laws and practices. The representatives provided compelling testimony that managing incarcerated offender populations can be assisted through developing public safety legislation based upon comprehensive fiscal and operational impacts of any criminal code revision requests. The representatives noted the importance of building consensus among decision makers in each component of the criminal justice and corrections system and to collaborate on common interests that protect the public, manage costs and build upon individual skills of an incarcerated offender population that will assist in the successful reintegration of the offender into the community.

B. Admissions to the Department of Correction:

1. Admissions Overview:

As indicted in the prior section, there has been a noteworthy increase in incarceration rates nationally. The committee reviewed the admissions to the Department of Correction by investigating the type of commitment. For purpose of this analysis, the admissions were broken down by:

- Regular Commitments;
- Technical Probation Violators;
- Probation Violators with a New Crime;
- Technical Parole Violators;
- Parole Violators with a New Crime;
- Recommitment Rates;
- Type of Offense; and,
- The Impact of Mandatory Sentences.

Admissions to the Department have increased by approximately 70% for males and 165% for females during the past 9 years according to the information below:

Year (SFY)	Male Admissions	Female Admissions	Total (1)
1996	8367	790	9157
1997	9352	967	10319
1998	10025	1068	11093
1999	10278	1198	11476
2000	10654	1255	11909
2001	11018	1462	12480
2002	12121	1580	13701
2003	13267	1861	15137
2004	14214	2097	16311

(1) Total also includes “returned escapees”, “returned community transition program offenders” and “un-sentenced offenders”

2. Probation and Parole Violators:

When reviewing the type of admission, the following information about probation and parole violators as a percentage of total admissions indicates:

Year: (SFY)	Number of Technical Probation Violators:		Total Admissions		Percentage	
	Male	Female	Male	Female	Male	Female
1996	436	52	8367	790	5.2	6.6
1997	545	54	9352	967	5.8	5.5
1998	820	70	10025	1068	8.1	6.5
1999	860	58	10278	1198	8.3	4.8
2000	945	64	10654	1255	8.8	5.0
2001	976	53	11018	1462	8.8	3.6
2002	1198	66	12121	1580	9.8	4.1
2003	1225	145	13267	1861	9.2	7.8
2004	1196	161	14214	2097	8.4	7.6

Year: (SFY)	Number of Technical Parole Violators		Total Admissions		Percentage	
	Male	Female	Male	Female	Male	Female
1996	568	45	8367	790	6.7	5.6
1997	762	58	9352	967	8.1	6.0
1998	816	79	10025	1068	8.1	7.3
1999	736	84	10278	1198	7.1	7.0
2000	518	48	10654	1255	4.8	3.8
2001	465	39	11018	1462	4.2	2.7
2002	1087	101	12121	1580	9.0	6.4
2003	1366	151	13267	1861	10.2	8.1
2004	1377	141	14214	2097	9.7	6.7

Similarly, the number of probation violators and parole violators with a new commitment as a percentage of total admissions has decreased for males between 1996 and 2004, but has increased for females during that same time period according to the table below:

Year (SFY)	Number of Probation Violators with New Commitment		Number of Total Admissions		Percentage:	
	Male	Female	Male	Female	Male	Female
1996	249	13	8367	790	3.0	1.6
1997	290	24	9352	967	3.1	2.5
1998	331	15	10025	1068	3.3	1.4
1999	315	18	10278	1198	3.1	1.5
2000	300	14	10654	1255	2.8	1.1
2001	175	10	11018	1462	1.6	.7
2002	206	75	12121	1580	1.7	4.7
2003	224	440	13267	1861	1.7	23.6
2004	386	380	14214	2097	2.7	18.1

Year (SFY)	Number of Parole Violators with New Commitment		Number of Total Admissions		Percentage:	
	Male	Female	Male	Female	Male	Female
1996	179	10	8367	790	2.1	1.3
1997	248	6	9352	967	2.6	.6
1998	242	19	10025	1068	2.4	1.7
1999	300	28	10278	1198	2.9	2.3
2000	196	13	10654	1255	1.8	2.3
2001	167	20	11018	1462	1.5	1.4
2002	440	44	12121	1580	3.6	2.8
2003	745	69	13267	1861	5.6	3.7
2004	799	79	14214	2097	5.6	3.8

The information presented and the discussions that were held indicate that the question, “what would make probation, parole and community corrections’ more successful?” must be answered. Strategies to make intermediate and community sanctions more effective appear to be the most reasonable approach to reducing recommitment rates, and a graduated progression to more serious and repetitive criminal activity.

3. Recombitment Rates:

The Department of Correction does not maintain a recidivism rate. It does maintain however, a return rate. This decision was made because it is a more honest representation of offenders known to the Indiana criminal justice system who re-offend and are recommitted to the department. Difficulties with incomplete national databases that provide inconclusive information on offenders’ arrests, convictions and sentences nationally make this type of comparison more honest. The Department presented information about the return rate for the past 8 years:

Year:	Males:	Females:	Combined:
1997	27.86%	16.32%	26.75%
1998	26.67%	15.88%	25.65%
1999	25.63%	15.42%	24.57%
2000	26.89%	17.22%	25.86%
2001	26.78%	13.94%	25.30%
2002	26.95%	14.29%	25.48%
2003	29.84%	14.82%	27.98%
2004	30.18%	15.31%	28.25%

4. Types of Offenses:

Information was distributed to the Committee that indicates drug offense commitments have had a significant impact to the total admissions and presumably to the operational capacity of the Department of Correction. A review of the drug offenses as a percent of all adult male commitments to the Department of Correction indicates there has been a 70% increase in total commitments to the Department over the past 9 years, and a 181% increase in the number of drug offenses during the past 8 years:

Year	Total Male Commitments	Total Drug Offense Commitments	Percent of Drug Offenses of All Commitments
1996	8367	1113	13.3
1997	9352	1029	11.0
1998	10025	1342	13.4
1999	10278	2004	19.5
2000	10654	2078	19.5
2001	11018	2506	22.7
2002	12121	2863	23.6
2003	13276	3124	23.5

Similarly, there was a noticeable increase in a variety of other offenses that have impacted adult male commitments to the Department. The most significant are:

Offense:	Class	Number in 1993	Number in 2003	Percent Increase
Resisting Law Enf	D	25	289	1056
OMVUI (Prior)	D	370 ⁽¹⁾	1142	208
Theft	D	480	1349	185
Non-Support	D	31	135	135
Failure to Return	D	14	106	106
Auto Theft	D	108	204	92
Auto Theft	C	21	72	243
Forgery	C	193	489	153
OMV After Sus	C	190 ⁽²⁾	474	149
Robbery	C	136	285	109
Battery	C	164	312	90
Burglary	C	393	631	60
Felon w Firearm	B	46 ⁽³⁾	95	106
Burglary	B	350	671	92
Robbery	B	235	392	67

(1) SFY 01 data

(2) SFY 97 data

(3) SFY 01 data

Testimony received provides five observations about the type of commitments:

- There was a general attitude of the Committee's participants who are judges, that incarceration should be reserved as a scarce resource, intended only for offenders who should not be supervised in the community, but that in some circumstances, offenders who could be supervised safely in the community must receive an executed sentence due to the mandatory sentencing provisions of the criminal code for certain offenses, under certain circumstances;
- Community Correction funds have expanded to 56 sites serving 67 counties. These 56 sites address over 90% of the state's general population.
- The Department of Correction has lead an aggressive campaign of promoting evidence based practices to fund services that provide desirable outcomes and not just for programs that are preferred by local communities;
- There is an inconsistent use among probation departments in the use of risk assessment instruments that provides additional information to the Court upon which to base a decision for continued community supervision; and,
- There have been technical violation centers established in Indianapolis and South Bend to assist in providing yet another alternative to judges so as to protect the public while reserving prison for violent, chronic offenders who are resistant to community supervision.

The expansion of community corrections funding is felt to have had a beneficial impact on these types of commitments. Discussion and testimony from representatives of the probation officers and the judges indicate that additional community corrections resources could continue to impact the commitment rate even further. Testimony also was received however that indicates the criteria in which to obtain community corrections funding make it unattractive for smaller counties to participate. One such restrictive practice however, has been removed by the Department of Correction that requires a smaller county to partner with another county in order to achieve some baseline of population size.

This information led the Committee to ask the question, "What are the circumstances that can be changed that will reduce the number of commitments to the Department of Correction, without increasing the risk to public safety. The committee identified 5 suggestions that were referred to work groups. These suggestions included:

- The use of a common risk assessment instrument throughout the various stages of the criminal justice and corrections system;
- The use of a common needs assessment document that could be used throughout the various stages of the criminal justice and correctional systems;
- The establishment of a continuum of sanctions that would be available to each court with criminal jurisdiction that would maintain at a minimum, probation supervision, electronic monitoring, work release/halfway houses and county jail confinement;
- The expansion of community corrections funds to non-participating counties as well as to counties that do not manage these minimum sanctions; and,
- An assessment of the mandatory sentence requirements in the criminal code that would allow greater judicial discretion in the sentencing of offenders.

5. Mandatory Sentences:

There was general consensus from the Committee members that the public attitude that supports “tough on crime” sentencing has had a significant impact on the commitment rate to the Department of Correction. Significant discussion was held both in the Committee meetings as well as the Criminal Code Revision work group that indicated there are four categories that mandatory sentences can be grouped. These groupings result in the lack of flexibility for a Court to suspend a sentence and obviously required an executed committed to the Department of Correction. These categories are based upon:

- Time between prior conviction and new crime;
- Crime itself;
- Use of deadly force; and,
- Juvenile offenses.

It is clear when reviewing the offenses that are included in the “prior offense,” “crime itself,” and “use of deadly force” categories that these offenses are the types of offenses that should be reserved for incarceration. The categories that address the “time” element and “juvenile offenses” may represent a more focused and reasonable manner to re-direct public policy if state incarceration is to be reserved only for the most violent and repetitive offender who is resistant to community sanctions. Information from the sentencing survey is helpful to understand the thoughts of criminal justice professionals in this area.

The Department of Correction was unable to provide an analysis of whether a mandatory sentence was the reason why offenders were committed to the Department. This was due to the inconsistent completion of the commitment order and the significant degree of staff time that would be needed to conduct a statistically significant sampling of randomly selected offender files.

As presented previously, there was a consensus among Committee members that mandatory sentencing had a significant impact on the number of offenders incarcerated in the Department of Correction that could have been managed and supervised in the community without jeopardizing public safety, but this consensus was based upon anecdotal information rather than research.

C. Releases from the Department of Correction:

How long an offender is confined, the number of releases and the number of admissions in relation to the number of releases impacts the population of the Department of Correction. The chart below indicates the difference in the number of admissions versus releases for the Department of Correction since 1996:

Difference in Releases		
Year:	Male	Female
1996	833	84
1997	1015	155
1998	1015	112
1999	1128	190
2000	913	158
2001	1203	195
2002	1080	133
2003	1564	230
2004	1332	108

Other than the mandatory release date, there are other various factors that impact the average length of stay:

1. Modification of Sentences;
2. Community Transition Program;
3. Credit Time and Time Earning Class; and,
4. Earned Credit Time

It is interesting to note that of all the parole and probation releases from the Department of Correction (this excludes discharge due to maximum release date or release to a wanting authority), about half the males were released to probation supervision. The number of releases to probation for females, though decreasing from a high of 60.2% in 1996, still is approximately 55% of all releases excluding discharge due to maximum release date or release to a wanting authority) according to the chart below:

Year:	Number of Probation Releases		Number of Parole Releases		% of Prob Releases (1)	
	Male	Female	Male	Female	Male	Female
1996	3597	377	3290	249	52.2	60.2
1997	3802	437	3718	291	50.5	60.0
1998	4221	507	3819	346	52.5	59.4
1999	4212	508	3804	385	52.5	56.9
2000	4442	528	4113	389	51.9	57.6
2001	4166	620	4179	479	49.9	56.4
2002	4403	674	4546	492	49.2	57.8
2003	4541	677	4782	613	48.7	52.5
2004	4938	829	5020	676	49.6	55.1

(1) The "Percentage of Probation Release" is the percent of parole releases when considered in the context of releases by parole and probation only.

The chart on the following page provides information about the length of sentence and the length of stay by felony class for the past ten years, excluding life sentences, the death sentence and life without the possibility of parole. The chart indicates that the average **length of sentence** for Murder, Class A, B, C and D felonies generally have increased over the past several years, with some intermittent annual exceptions. The average **length of stay** for Class B, C and D felonies continue to decrease, but again, with some intermittent annual exceptions. The most notable explanations for this are the opportunity for offenders to obtain earned credit time and be released onto a community transition program as authorized by state statutes.

The information includes all types of releases, including sentence modifications, dismissals and reversals:

Average Length of Stay:

SFY	95	96	97	98	99	00	01	02	03	04
Murder	14.3	15.4	14.6	14.9	16.9	17.6	18.6	n/a	19.1	18.1
Fel A (1)	7.2	6.9	7.6	7.2	7.6	8.3	9.1	n/a	8.1	8.0
Fel A (2)					9.5	10.2	10.1	n/a	9.5	9.2
Fel B	3.9	3.8	3.7	3.2	3.6	3.5	3.7	n/a	3.7	3.7
Fel C	2.2	2.1	2.1	1.8	2.0	1.9	1.9	n/a	1.9	1.8
Fel D	1.1	1.0	1.0	.9	323d	301d	290d	n/a	278d	261d

Average Length of Sentence:

SFY	95	96	97	98	99	00	01	02	03	04
Murder	30.6	31.1	29.9	32.5	32.4	36.4	37.8	n/a	40.6	39.6
Fel A (1)	17.3	16.7	18.0	19.5	17.6	18.8	19.8	n/a	18.9	19.6
Fel A (2)					21.7	23.2	22.2	n/a	22.3	22.5
Fel B	8.3	8.2	8.0	8.1	7.3	7.3	7.7	n/a	7.9	8.1
Fel C	4.6	4.6	4.5	4.4	3.7	3.7	3.9	n/a	4.1	4.0
Fel D	2.4	2.3	2.2	2.1	1.7	607d	609d	n/a	581d	558d

(1) All Class A Felonies

(2) Class A felonies excluding "Conspiracy" beginning in 1999. This is figured both ways due to the tendency to have a large portion of their sentence suspended

Year: **All Releases:**
Sentence Modification Releases

The lower rates of sentence modifications means that more offenders are serving the sentence ordered by the Court, thereby serving longer sentences and staying longer in the Department of Correction.

Earned Credit Time also was discussed with the Committee. Earned Credit Time is the ability of an offender to receive or earn additional time off a sentence due to completion of an educational or substance abuse treatment program. The purpose of this statute is to encourage completion of services and programs. It was referred for

discussion to a work group to determine whether earned credit time should be expanded to include employment at a prison industries job, in view of the research that indicates employment upon release is one of the most critical components of a successful transition to the community.

The Department provided compelling information about the increase in the use of earned credit time over the past several years. The Department indicates that the allowance for earned credit time that was legislated in for education and substance abuse treatment accomplishments has accounted for numerous “bed days” saved per year. In State Fiscal Year 2003, the Department reports that more than 10,000 offenders were awarded 348,467 days of education earned credit time. Similarly, 7397 offenders were awarded 5065 time cuts (3-6 month early release) for successful program completion.

Earned credit time should not be confused with time earning class or good time. There are three time earning classes in Indiana. Upon conviction, an offender is automatically placed in Time Earning Class 1, whereby the offender can receive 1-day credit for every day served in good behavior. Time Earning Class Two allows for 1-day credit for every 2 days served with good behavior, and Time Earning Class Three results in no credit time earned, as the offender has illustrated poor behavior. The Department noted that almost 94% of all offenders are in Time Earning Class One, almost 4% in Time Earning Class Two, and 2.5% in Time Earning Class Three (no credit time), thereby maximizing the use of this statutory tool for institutional management and reduction in the release date.

In reviewing the amount of credit days that were deprived of offenders, the Department of correction indicates that this number has stayed relatively constant during the past five years:

Year:	Deprived Days:
2000	544,444
2001	564,271
2002	556,512
2003	556,564

	2004	Not
available		

Another mechanism for release was the passage of the Community Transition program in the 1999 General Assembly. The legislative intent of the statute is to provide a brief period of time, up to 120 days, for the release of an offender by Court order to the community in which the offender is to reside after release from the department of correction. During this period of time, the offender is to be assisted by either a probation or parole officer in securing housing, employment and linking to any necessary services that will promote a successful transition to the community. The use of the program has met with less than moderate acceptance. Since the passage of the statute, information indicates the number of releases by this mechanism:

Year:	Male Releases Total Releases	Female Releases
2000	33	10
	43	
2001	274	32
	306	
2002	668	106
	774	
2003	1020	149
	1169	
2004	1087	190
1277		

It was noted that based upon estimated release dates, that approximately 61% of all offender in a state correctional facility will be released within 3 years while 75% will be released within 5 years and over 90% would be released within 10 years. The importance and necessity of promoting those services and accomplishments that will assist an offender to secure housing, employment and maintain important service linkages becomes even more apparent based upon this information. The Governor's initiative entitled the Indiana Offender Reintegration Project is a direct result of this type of thinking and will be discussed under the "Promising Practices" section.

D. Bed Capacity of the Department of Correction:

The offender population for the Department of Correction has increased with an average growth rate of 4.5% per year between 1993 and 2004. The chart below chronicles this growth:

Year: Population	Male Population	Female
1993	13428	
793		
1994	14010	
821		
1995	14482	
879		
1996	15368	
944		
1997	16484	
1065		
1998	17419	
1275		
1999	18356	
1374		
2000	18457	
1468		
2001	19108	
1556		
2002	19869	
1726		
2003	20850	
1803		
2004	21916	
1844		

(Note: All population data is for July 1st of each year and includes offenders held in county jails due to overcrowding)

This increase in commitments has resulted in severe overcrowding for department of correction facilities. The chart below indicates the degree of overcrowding by facility on June 30, 2004:

Adult Male Offenders:

Level One

Facility 30,2004	Rated Bed Population Capacity Capacity	Percent +/-	Total Beds	June
Chain O' Lakes 116	91 27.4		120	
Johnson County 115	100 15.0		119	
Henryville 111	98 13.2		118	
Medaryville 128	100 28.0		128	
Miami 203	204 - .4		204	
Pendelton 218	128 70.3		220	
Wabash Valley 189	120 57.5		198	
	Total: 841		1107	
1080	28.4%			
Indianapolis WRC 117	113 3.5		126	
South Bend WRC 88	91 - 3.2		90	
	Total: 204		216	
205	.4%			

Level Two

Facility 30, 2004	Rated Bed Population Capacity Capacity	Percent +/-	Total Beds	June
Branchville 1118	756 47.8		1133	
Lakeside 300	270 11.1		302	
New Castle 270	244 10.6		1543	
Plainfield 1480	1130 31.0		1490	
Putnamville 2404	1650 45.7		2436	
Westville 2788	1000 178.8		2881	

8360	Total: 5050	9785
	65.5%	

Level Three

Facility Population	Rated Bed Percent +/- Capacity	Total Beds	June
30, 2004	Capacity		

Corr Industry	716	1412	
1399	95.4		
Miami	1836	2168	
2131	16.0		
Wabash Valley	1000	1023	
990	-1.0		
Total:	3552	4603	
4520	27.2%		

Level Four

Facility Population	Rated Bed Percent +/- Capacity	Total Beds	June
30, 2004	Capacity		

State Prison	1650	2070	
	1714	3.8	
NCastle Pscyh	128	136	
116	-9.3		
Pendelton	1421	1705	
1675	17.8		
Reception	348	695	
674	93.6		
Wabash Valley	352	797	
780	122.0		
Total:	3899	5403	
4959	27.1%		

Long Term Segregation

Facility Population	Rated Bed Percent +/- Capacity	Total Beds
June 30, 2004	Capacity	

Max Control	224	220
203	-9.3	

Wabash Valley	288	178
171	-40.6	
Total:	512	398
374	-26.9%	

Other Contract Beds

Facility: Population	Rated Bed Percent +/- Capacity	Total Beds	June
30, 2004	Capacity		
<hr/>			
Otter Creek	656	656	
655	N/a		
Jail	N/a	1576 (1)	
1763	N/a		
Total:	N/a	2232	
2418	N/a		

Adult Female Offenders:

Level One

Facility Population	Rated Bed Percent +/- Capacity	Total Capacity
Beds	June 30, 2004	Capacity
<hr/>		
Atterbury	90	98
90		0
Madison	96	176
64	-33.3	
Indianapolis	60	56
53	-11.6	
Total:	246	330
207	-15.8%	

Level Two

Facility Population	Rated Bed Percent +/- Capacity	Total Beds	June
30, 2004	Capacity		
<hr/>			
Rockville	624	1219	
1158	85.5%		

Level Three

Facility Population	Rated Bed Percent +/- Capacity	Total Beds	June
30, 2004	Capacity		
Intake	27	84	
72	166.6		
Women's Prison	322	356	
301	-6.5		
Total:	349	440	
373	6.8%		

Other Contract Beds

Facility Population	Rated Bed Percent +/- Capacity	Total Beds	June
30, 2004	Capacity		
Jails	N/a	134 (1)	
106	N/a		

(1) As of the week of September 27, 2004

The Committee received information that there is a higher rate of incarceration than 10 years ago and offenders were receiving longer "average length of sentences". The Department of Correction provided information that indicates a total of 6894 male and female beds have been established in the Department since 1994 for both male and female offenders. This total includes 450 replacement beds at the Putnamville Correctional Facility (Formerly the Indiana State Farm) and 576 female converted beds at the Rockville Correctional Facility. These beds, by year and security level are contained in the table below:

Male:

Year:	Level 1	Level 2	Level 3	Facility	#RB
Cost (1)		Total			

1993

0

1994			450	PCF	450
\$5.1	0 (2)				
1995					
1996			1000	WVCF	1000
68.0	1000				
1997					
Year:	Level 1	Level 2	Level 3	Facility	#RB
Cost (1)		Total			
1998					
1999	200		1200	MCF	1200
	99.9	1400			
2000					
2001			1600		1600
67.7	1600				
2002	200		1668	NCCF	1868
114.6	1868				
2003					
2004					
Total	400		5918		5918
\$353.3		4868(3)			

(1) In millions of dollars

(2) Replacement beds; not expansion of the total number of beds

(3) Excludes replacement beds

Female:

Year:	Level 1	Level 2	Level 3	Facility	#RB
Cost (1)		Total			
1993					
1994		144		RCF	144
	\$ 2.3	144			
1995					
1996					
1997		432		RCF	432 (2)
38.0	432				
1998					
1999					
2000					
2001					
2002					
2003					
2004					
Total		576			576
\$40.3	576				

(1) In millions of dollars

(2) Conversion

It should be noted that currently the Department of Correction has 1983 offenders backed up in the county jails, at a cost of \$35 per day or

approximately \$25 million a year. This does not include an additional expenditure of approximately \$11.5 million per year for an average of 650 offenders confined at a private facility located in Kentucky. The county jail beds include Indiana jails as well as 4 Kentucky jails.

As a means to re-direct these expenditures, a suggestion was made that the language in the budget bill of the 2003 General Assembly be rescinded. That language for both the Miami Correctional Facility and the New Castle Correctional Facility states, "The foregoing appropriation does not include money to increase bed capacity beyond what was in use on June 30, 2003."

There were three advantages noted to this suggestion:

- Keep Indiana funds in Indiana;
- Reduce the costs of transportation to these out of state facilities; and,
- The New Castle Correctional Facility beds were designed specifically for a therapeutic treatment community for substance abusers; a need that is both critical to address offender needs and that provides earned credit time for successful completion of the program.

While it remains conventional wisdom that prevention and, earlier intervention services have a beneficial impact on crime, two actions must be undertaken in order for prevention and early intervention to have the impact that is desired:

- 1) A clear purpose statement or philosophy of the Criminal Code must be developed; and,
- 2) A continuum of sanctions and services must be available to the Court to implement the purpose of philosophy statement.

The most clear example of earlier intervention was the testimony received from the Indianapolis Police Department, the Marion County Prosecutor's Office, a Marion County Superior

Court Judge and a local attorney that indicated the difficulty of addressing the service needs of mentally ill and drug dependant offenders. This difficulty was balanced with the testimony of the Department of Correction in which it was stated that between 12-13% of the adult offender population are designated with a classification code for a) Acutely mentally ill (the inability to function in a prison environment because of danger to self or others), b) Mental illness or emotional condition that requires the use of psychotropic medication or major tranquilizers and may require frequent monitoring by a physician (the ability to function in a prison environment) and c) Any acute or stable mental or emotional condition that has been evaluated by a psychiatrist but which requires infrequent psychiatric monitoring (the ability to function in a prison environment and may qualify for outside of prison work details).

Approximately 11 of the total current adult population currently are being prescribed psychotropic medication. Approximately 75-80 of the adult population currently is dealing with, or has a history of addressing substance abuse or alcohol addiction. Generally, the offenders identified as having a mental illness are serving a period of incarceration for:

- | | |
|----------------------|-------|
| • Murder or A Felony | 27.0% |
| • B Felony | 38.5% |
| • C Felony | 22.0% |
| • D Felony | 12.5% |

The top crimes committed by these offenders are:

- 1) Murder (248)
- 2) B Felony Burglary (215)
- 3) B Felony Robbery (158)
- 4) A Felony Child Molestation (109)

The most common diagnoses are:

- Anxiety Disorder
- Major Depression
- Dysthemia
- Post-Traumatic Stress Disorder

- Bi-polar
- Schizophrenia or psychosis

VI. INDIANA CRIMINAL SENTENCING AND CORRECTIONS SURVEY

VI. Indiana Criminal Sentencing and Corrections Survey

The Indiana Criminal Justice Institute (the Institute) developed *Indiana's Criminal Sentencing and Corrections Survey*^a to assess practitioner perspectives on Indiana's sentencing laws and policies. This assessment includes the purpose of the criminal justice and corrections systems, the availability of sentencing options, and the needs of offenders held in state correctional facilities.

Findings contained in this report and the attached presentation are preliminary in the sense that they represent the first look at the data in the absence of a deliberative written research report. When considering these findings, it is important to note that the purpose of this report is to descriptively present overall survey results, not to comprehensively explain and interpret each finding. The Institute plans to release a final research report in 2005.

^a Preliminary findings were presented at the October 6, 2004 Sentencing Policy Study Committee meeting. A copy of the material presented is included as an attachment to this report.

A. Method

The survey was administered for the Institute by the Center for Urban Policy and the Environment, Indiana University, Indianapolis during May and June of 2004. Five groups of criminal justice professionals were surveyed totaling 681 potential respondents, including 258 judges with criminal case experience, 91 elected prosecuting attorneys, 156 appointed public defenders, 120 adult chief probation officers, and 56 directors of adult community correction programs funded by the Community Corrections Grant Act. Respondents received a letter on Sentencing Policy Study Committee letterhead from representatives of the Committee informing them about the survey. Respondents were asked to complete the questionnaire either on the web or on paper by May 28, 2004. To enhance the response rate, a follow-up letter, a paper copy of the questionnaire, and a self-addressed, postage-paid return envelope were mailed to all individuals who had not yet responded as of May 24. To ensure a maximum response rate, lead agency representatives and staff from the Institute followed up via telephone with all non-respondents in each of the five groups to again encourage them to complete the survey questionnaire.

Respondent groups and response rates

Respondent Group	Number Completing Survey	Number Sampled	Response Rate
Adult Community Correction Program Directors	51	56	91%
Appointed Public Defenders	84	156	54%
Elected Prosecuting Attorneys	78	91	87%
Adult Chief Probation Officers	104	120	87%
Judges with criminal case experience	211	258	82%
Total	528	681	78%

(See survey presentation, page 3)

Response rates ranged from a low of 54% for Appointed Public Defenders to a high of 91% for Adult Community Correction Program Directors. Overall, 78% (or 528 of 681) of respondents surveyed returned a completed questionnaire.

B. Goals of Indiana's criminal sentencing laws and policies

Respondents were asked to indicate what they believe should be the most important goal of Indiana's criminal sentencing laws and policies. The five goals that were available to respondents are listed in the table below. Column percentages may not total to 100 percent because on occasion, respondents selected more than one goal as most important.

	All Respondents	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecuting Attorneys
N	528	51	211	104	84	78
Deterrence	35%	29%	39%	30%	17%	54%
Incapacitation	15%	6%	10%	22%	2%	38%
Rehabilitation	44%	57%	47%	36%	64%	15%
Restoration	4%	4%	3%	4%	5%	4%

Retribution	7%	6%	6%	9%	2%	10%
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(See survey presentation, page 6)

C. Extent of agreement that only individuals for whom incarceration is the most appropriate sentence are being sent to a state correctional facility

Respondents were asked to provide their agreement with the following statement: Only those individuals for whom incarceration is the most appropriate sentence are being sent to a state correctional facility from your community.

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	63%	77%	71%	17%	83%
Disagree	29%	21%	27%	82%	14%
Don't Know	8%	2%	2%	1%	3%
No Response	0%	0%	0%	0%	0%
Total	100%	100%	100%	100%	100%

(See survey presentation, page 7)

D. Effect of laws, policies, and practices on length of prison sentences

Respondents were asked their opinion on the effect of several sentencing laws, policies, and practices. In the first part of this question, respondents were asked to indicate whether they agreed or disagreed that each item sometimes results in offenders receiving too much prison time. As an example, the table below shows that 29% of Community Correction Directors “agreed” that “incomplete and/or unconfirmed information on the presentence investigation report” sometimes results in offenders receiving too much prison time.

**Incomplete and/or unconfirmed information on the presentence investigation report
(See survey presentation, page 9)**

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	29%	7%	7%	40%	3%
Disagree	43%	88%	86%	51%	92%
Don't Know	22%	4%	3%	5%	1%
No Response	6%	1%	5%	4%	4%
Total	100%	100%	100%	100%	100%

Insufficient use of research-based instruments for assessing offender service/program needs (See survey presentation, page 10)

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	65%	30%	40%	55%	12%
Disagree	18%	57%	44%	24%	77%
Don't Know	12%	11%	11%	19%	9%
No Response	6%	1%	5%	2%	3%
Total	100%	100%	100%	100%	100%

Insufficient use of research-based instruments for assessing the risk of re-offending (See survey presentation, page 11)

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	69%	34%	47%	51%	9%
Disagree	16%	51%	39%	27%	76%
Don't Know	10%	13%	9%	19%	12%
No Response	6%	2%	5%	2%	4%
Total	100%	100%	100%	100%	100%

Plea agreements (See survey presentation, page 12)

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	37%	22%	26%	31%	5%
Disagree	51%	73%	63%	61%	92%
Don't Know	6%	1%	6%	5%	0%
No Response	6%	3%	5%	4%	3%
Total	100%	100%	100%	100%	100%

Effect of laws, policies, and practices continued from previous page...

Lack of community-based sanctions (See survey presentation, page 13)

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	37%	39%	39%	63%	32%
Disagree	53%	54%	53%	29%	63%
Don't Know	0%	4%	3%	5%	1%
No Response	10%	2%	5%	4%	4%
Total	100%	100%	100%	100%	100%

Insufficient capacity in existing alternatives to incarceration (See survey presentation, page 14)

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	55%	55%	46%	85%	33%
Disagree	35%	40%	46%	11%	62%

Don't Know	2%	2%	3%	2%	3%
No Response	8%	2%	5%	2%	3%
Total	100%	100%	100%	100%	100%

Statutes which require some drug offenses to be charged as higher level felonies depending on the quantity of drug involved; age of seller and possessor; or proximity to schools, parks, etc. (See survey presentation, page 15)

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	51%	70%	48%	93%	31%
Disagree	35%	27%	43%	5%	63%
Don't Know	8%	2%	3%	0%	0%
No Response	6%	1%	6%	2%	6%
Total	100%	100%	100%	100%	100%

**Statutes requiring an additional fixed-term for habitual offenders
(See survey presentation, page 16)**

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	47%	48%	20%	82%	6%
Disagree	39%	49%	72%	14%	90%
Don't Know	8%	1%	3%	1%	1%
No Response	6%	1%	5%	2%	3%
Total	100%	100%	100%	100%	100%

Effect of laws, policies, and practices continued from previous page...

Statutes limiting the amount of a sentence that can be suspended for voluntary manslaughter committed by means of a deadly weapon (See survey presentation, page 17)

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	16%	18%	10%	42%	8%
Disagree	45%	58%	68%	26%	85%
Don't Know	33%	22%	17%	30%	4%
No Response	6%	1%	5%	2%	4%
Total	100%	100%	100%	100%	100%

Statutes limiting the amount of a sentence that can be suspended for a felony listed in IC 35-50-2-2(4)^b (See survey presentation, page 18)

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	29%	46%	17%	83%	13%
Disagree	53%	46%	71%	7%	74%
Don't Know	12%	4%	7%	7%	4%
No Response	6%	4%	5%	2%	9%
Total	100%	100%	100%	100%	100%

Statutes limiting the amount of a sentence that can be suspended for Class A or B felonies when there is a prior unrelated felony conviction (See survey presentation, page 19)

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	31%	45%	23%	82%	15%
Disagree	53%	45%	63%	11%	74%
Don't Know	10%	7%	7%	5%	3%
No Response	6%	3%	7%	2%	8%
Total	100%	100%	100%	100%	100%

Effect of laws, policies, and practices continued from previous page...

Statutes limiting the amount of a sentence that can be suspended for Class C felonies when less than 7 years have elapsed since release for a prior unrelated felony conviction (See survey presentation, page 20)

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	49%	47%	27%	80%	14%
Disagree	35%	44%	62%	11%	72%
Don't Know	8%	6%	7%	7%	5%
No Response	8%	3%	5%	2%	9%
Total	100%	100%	100%	100%	100%

^b **Offenses listed in IC 35-50-2-2(4) are** murder; battery with a deadly weapon or battery causing death; sexual battery with a deadly weapon; kidnapping; confinement with a deadly weapon; rape as a Class A felony; criminal deviate conduct as a Class A felony; child molesting as Class A or Class B felony; robbery resulting in serious bodily injury or with a deadly weapon; arson for hire or resulting in serious bodily injury; burglary resulting in serious bodily injury or with a deadly weapon; resisting law enforcement with a deadly weapon; escape with a deadly weapon; rioting with a deadly weapon; dealing in cocaine, a narcotic drug, methamphetamine, or a schedule I, II, or III controlled substance if the person possessed a firearm, or the person delivered or intended to deliver to a person under 18 years of age at least 3 years junior to the person and was on a school bus or within 1,000 feet of school property, a public park, a family housing complex, or a youth program center; operating a vehicle while intoxicated with at least 2 prior unrelated convictions for OVWI; and aggravated battery.

Statutes limiting the amount of a sentence that can be suspended for Class D felonies when less than 3 years have elapsed since release for a prior unrelated felony conviction (See survey presentation, page 21)

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	51%	52%	34%	79%	18%
Disagree	31%	42%	55%	13%	71%
Don't Know	10%	3%	7%	6%	3%
No Response	8%	3%	5%	2%	9%
Total	100%	100%	100%	100%	100%

Statutes requiring a nonsuspendable prison term for knowingly or intentionally providing a child with, or permitting a child to have, a firearm (See survey presentation, page 22)

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	16%	26%	12%	29%	10%
Disagree	55%	50%	74%	26%	69%
Don't Know	22%	21%	10%	43%	12%
No Response	8%	3%	5%	2%	9%
Total	100%	100%	100%	100%	100%

Statutes requiring a nonsuspendable prison term for possessing cocaine while possessing a firearm (See survey presentation, page 23)

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	24%	35%	13%	62%	9%
Disagree	51%	50%	76%	18%	77%
Don't Know	18%	12%	7%	18%	5%
No Response	8%	3%	5%	2%	9%
Total	100%	100%	100%	100%	100%

Effects of laws, policies and practices continued from previous page...

Statutes requiring a nonsuspendable additional prison term when a firearm is used during the commission of an offense listed in IC 35-50-2-11^c (See survey presentation, page 24)

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	20%	21%	10%	48%	4%
Disagree	61%	66%	79%	40%	82%
Don't Know	14%	9%	6%	8%	5%
No Response	6%	4%	6%	4%	9%
Total	100%	100%	100%	100%	100%

Statutes requiring that the additional prison term when a firearm is used during the commission of an offense listed in IC 35-50-2-11 (see footnote 3) be served consecutively to the underlying offense (See survey presentation, page 25)

^c **Offenses listed in IC 35-50-2-11** are felonies that result in death or serious bodily injury; kidnapping; and criminal confinement as a Class B felony.

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	24%	23%	16%	55%	6%
Disagree	55%	64%	73%	29%	78%
Don't Know	16%	10%	6%	14%	6%
No Response	6%	3%	5%	2%	9%
Total	100%	100%	100%	100%	100%

Statutes requiring that prison terms for a previous crime and a new crime committed before release for the previous crime be served consecutively (See survey presentation, page 26)

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	25%	25%	16%	69%	9%
Disagree	53%	70%	76%	23%	83%
Don't Know	14%	2%	3%	5%	0%
No Response	8%	3%	5%	4%	8%
Total	100%	100%	100%	100%	100%

Statutes requiring that prison terms for an initial crime and a subsequent crime committed while released on bond or one's own recognizance for the initial crime be served consecutively (See survey presentation, page 27)

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecutin Attorneys
N	51	211	104	84	78
Agree	29%	25%	16%	74%	8%
Disagree	55%	69%	75%	20%	83%
Don't Know	8%	2%	4%	4%	0%
No Response	8%	4%	5%	2%	9%
Total	100%	100%	100%	100%	100%

In the second part of this question, respondents were asked to indicate by placing a checkmark next to the five sentencing laws, policies, and practices they believe are the most likely to result in sentences involving too much prison time. As an example, six percent (6%) of respondents felt that incomplete and/or unconfirmed information on the presentence investigation report was one of the five laws, policies, and practices most likely to result in sentences involving too much prison time.

	%		%
Incomplete and/or unconfirmed information on the presentence investigation report	6%	Statutes limiting the amount of a sentence that can be suspended for Class A or B felonies when there is a prior unrelated felony conviction	19
Insufficient use of research-based instruments for assessing offender service/program needs	23%	Statutes limiting the amount of a sentence that can be suspended for Class C felonies when less than 7 years have elapsed since release for a prior unrelated felony conviction	17

Insufficient use of research-based instruments for assessing the risk of re-offending	25%	Statutes limiting the amount of a sentence that can be suspended for Class D felonies when less than 3 years have elapsed since release for a prior unrelated felony conviction	20
Plea Agreements	15%	Statutes requiring a nonsuspendable prison term for knowingly or intentionally providing a child with, or permitting a child to have, a firearm	2%
Lack of community-based sanctions	32%	Statutes requiring a nonsuspendable prison term for possessing cocaine while possessing a firearm	7%
Insufficient capacity in existing alternatives to incarceration	41%	Statutes requiring a nonsuspendable additional prison term when a firearm is used during the commission of an offense listed in IC 35-50-2-11 (see footnote 3)	2%
Statutes which require some drug offenses to be charged as higher level felonies depending on the quantity of drug involved; age of seller and possessor; or proximity to school, parks, etc.	44%	Statutes requiring that the additional prison term when a firearm is used during the commission of an offense listed in IC 35-50-2-11 (see footnote 3) be served consecutively to the underlying offense	3%
Statutes requiring an additional fixed-term for habitual offenders.	20%	Statutes requiring that prison terms for a previous crime and a new crime committed before release for the previous crime be served consecutively	10
Statutes limiting the amount of a sentence that can be suspended for voluntary manslaughter committed by means of a deadly weapon	5%	Statutes requiring that prison terms for an initial crime and a subsequent crime committed while released on bond or one's own recognizance for the initial crime be served consecutively	9%
Statutes limiting the amount of a sentence that can be suspended for a felony listed in IC 35-50-2-2(4) -- (see footnote 2)	18%		

(See survey presentation, page 28)

E. Comprehensive Offender Reentry Plans

As defined for the survey, the goal of a “*Comprehensive Offender Reentry Plan*” is to balance the unique combination of sanctions, surveillance, services, and treatment programs an offender needs – BOTH DURING AND AFTER A TERM OF IMPRISONMENT – to maximize the likelihood that the offender will live by society’s rules and not re-offend. Continual assessment and information to identify the needs, strengths, and weaknesses of individual offenders, including any risks posed by an offender, are used to develop and ensure the effectiveness of the Reentry Plan. The most comprehensive Reentry Plans include governmental and nongovernmental partnerships to provide the unique combination of interventions an offender needs.

For Column A, assuming sufficient resources are available, respondents were asked to indicate whether each of the following components should be available for use when developing a *Comprehensive Offender Reentry Plan*.

For Column B, assuming resources are limited, respondents were asked to indicate how important you think it would be to have each component available for use when developing a Reentry Plan.

As an example, 88% of respondents indicated that “comprehensive and confirmed pre-sentence investigation reports” should be available when developing a *Comprehensive Offender Reentry Plan* if sufficient resources are available, while 79% of respondents indicated they should be available even when resources are limited.

	A	B
	Sufficient Resources	Limited Resource
Comprehensive and confirmed pre-sentence investigation report	88%	79%
Research-based instruments to assess the risk of re-offending	78%	68%
Supervision under community corrections	85%	81%
Supervision under general probation	74%	73%
Intensive supervision probation	76%	73%
Graduated sanctions while under probation or community correction supervision	81%	76%
Electronic devices to monitor an offender’s whereabouts	86%	78%
Home detention programs	86%	80%
Day reporting programs	81%	73%
Residential work release programs	90%	85%
Court fines, monetary penalties, and user fees	51%	41%
Community service programs	78%	64%
Victim restitution programs	77%	66%
Victim-offender mediation programs	45%	36%

Continued from previous page...

	A	B
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	Sufficient Resources	Limited Resource
Research-based instruments to assess service, program, and treatment needs such as educational needs, job aptitude, job skills, substance abuse, and mental health	80%	73%
Programs addressing an offender's willingness and motivation to change	79%	70%
Adult Basic Education, GED, or literacy services	92%	88%
Job placement and training services	91%	88%
Substance abuse treatment services	93%	91%
Mental health services	90%	85%
Life skills training	86%	76%
Housing assistance	69%	57%
Transportation assistance	66%	53%
Health care/medical services	60%	48%
Family counseling services	77%	67%
Parenting programs	77%	67%
Child support enforcement services	72%	57%
Faith-based services	51%	41%
Sex offender programs	86%	83%
Continuity between prison and community services (i.e., wrap around services)	77%	70%
Offender participation in plan development	77%	70%
Participation of offender's family or guardian in plan development	72%	59%
Facilitation of contact among incarcerated offenders, family members, and other supportive community members	66%	54%
Community members serving as advisors, mentors, and advocates for offenders	66%	55%
Ability to sanction the offender for poor behavior	91%	89%
Ability to reward the offender for good behavior	85%	84%

(See survey presentation, pages 30-35)

Assuming sufficient resources are available, respondents were asked to indicate what is the best time to develop a *Comprehensive Offender Reentry Plan*?

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecuting Attorneys
N	51	211	104	84	78
At Sentencing	27%	15%	16%	31%	13%
At Prison Intake	10%	13%	19%	20%	15%
Near Prison Release Date	51%	63%	55%	36%	56%
Upon Return to the Community	2%	2%	5%	1%	6%
No Response	10%	7%	5%	12%	9%
Total	100%	100%	100%	100%	100%

(See survey presentation, page 36)

Respondents were asked to provide an explanation for why this is the best time to develop a plan. As an example, of those respondents who identified “at sentencing” as the best time to develop a *Comprehensive Offender Reentry Plan*, 52% explained their decision as “to inform best sentence and treatment plan”. Four hundred and nineteen (419) respondents provided one or more comments and their responses are summarized in the groups below.

	At Sentencing	At Prison Intake	Near Prison Release Date	Upon Return to Community
N	88	77	238	16
To inform best sentence and treatment plan	52%	0%	0%	6%
Early planning is better	15%	10%	0%	0%
Family/community/offender participation in plan development	3%	0%	1%	6%
Best information/assessments available at this point	0%	43%	64%	25%
So plan can be prepared at best time (available resources known)	1%	0%	35%	19%
Treatment continuity from this point forward	1%	5%	0%	0%
Offender accountability/motivation	27%	35%	18%	31%
Other	13%	14%	2%	13%

(See survey presentation, page 37)

Assuming sufficient resources are available, respondents were asked to indicate who would be best-suited to monitor an offender's progress under a *Comprehensive Offender Reentry Plan*?

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecuting Attorneys
N	51	211	104	84	78
Trial Courts	2%	8%	2%	7%	9%
Community Correction Personnel	73%	36%	25%	24%	32%
Probation Officers	8%	25%	34%	24%	33%
Parole Officers	0%	9%	9%	7%	6%
IDOC Personnel (Other than Probation officers)	4%	7%	6%	5%	8%
Other	6%	8%	17%	21%	5%
No Response	8%	7%	8%	12%	6%
Total	100%	100%	100%	100%	100%

(See survey presentation, page 38)

Respondents were asked to provide an explanation for why this is the entity best-suited to monitor an offender's progress. As an example, of those respondents who identified "trial court" as best-suited to monitor an offender's progress under a *Comprehensive Offender Reentry Plan*, 35% explained their decision as "is familiar with offender and offender needs". Three hundred and four (304) respondents provided one or more comments and their responses are summarized in the groups below.

	Trial Court	Community Corrections Personnel	Probation Officers	Parole Officers	IDOC Personnel
N	20	139	99	24	22
Has capacity to supervise offender	0%	27%	18%	13%	5%
Is familiar with offender and offender needs	35%	9%	38%	8%	59%
Is able to assess offender risk and needs	0%	2%	2%	0%	14%
Staff have relevant experience and training	0%	14%	21%	29%	9%
Has access to programs and services	5%	37%	21%	13%	18%
Is knowledgeable about community needs/standards	10%	21%	23%	8%	5%
Can ensure consistency and fairness of plan	25%	5%	1%	13%	5%
Has the financial wherewithal	0%	0%	0%	29%	9%
Other	0%	12%	1%	4%	0%

(See survey presentation, page 39)

Respondents were asked to identify any crime or types of offenders for whom shorter terms of incarceration followed by highly

structured sanctions, services, and treatment programs in the community under a *Comprehensive Offender Reentry Plan* would be INAPPROPRIATE? Four hundred and forty-three (443) respondents provided comments that are summarized in the groups below.

Crime of Type of Offender	%	Crime of Type of Offender	%
Sex Offenses	59%	Weapons Offenses/Deadly Weapon Crimes	5%
Violent Crimes/Crimes Against People	47%	Arson	5%
Habitual/Repeat Offenders (any offense)	27%	Mentally Ill Offenders	4%
Murder/Attempted Murder	26%	Determine on a Case by Case Basis	5%
Drug & Alcohol Offenses (any severity)	15%	Other	1%
Domestic Violence/Child Abuse/Neglect	5%	None	9%

(See survey presentation, page 40)

Excluding any crime or type of offender identified, respondents were asked to indicate whether they would favor or disfavor early release for appropriate offenders currently incarcerated in state correctional facilities if *Comprehensive Offender Reentry Plans* were available. Reasons provided for favoring or disfavoring early release, are summarized in the groups below.

	Community Correction Directors	Judges	Chief Probation Officers	Public Defenders	Elected Prosecuting Attorneys
N	51	211	104	84	78
Strongly Favor	37%	17%	12%	54%	3%
Favor	45%	45%	56%	33%	33%
Disfavor	2%	16%	13%	2%	19%
Strongly Disfavor	2%	8%	5%	0%	24%
Don't Know	4%	9%	9%	2%	14%
No Response	10%	6%	7%	8%	6%
Total	100%	100%	100%	100%	100%

Reasons for Favoring Early Prison Release	%	Reasons for Disfavoring Early Prison Release	%
Promotes rehabilitation over punishment	33%	Need consistent and clear sentencing	37%
Would increase chances of success	22%	Original sentence is appropriate sentence	30%
Prisons are overcrowded	16%	Non-prison options already exhausted	21%
Would reward progress in prison	12%	Credit already given to reduce time served	14%
Would be cost effective	11%	Insufficient supervision/program resources	14%
Incarceration becomes counter- productive	10%	Sends wrong message to future offenders	6%
Offenders will returning to community anyway	9%	Community safety	6%
Some people shouldn't be in prison anyway	6%	Likelihood of re-offense too high	4%
		Other	8%

(See survey presentation, pages 41-43)

F. Sanctions, services, and treatment programs

Respondents were asked to indicate the following sanctions, services, and treatment programs for which they know or

believe their community LACKS the capacity to adequately serve offenders who are currently in their community. For example, 13% of all respondents indicated that they know or believe their community lacks the capacity for “comprehensive and confirmed pre-sentence investigation reports”.

Sanction, Service, and Treatment Programs	%	Sanction, Service, and Treatment Programs	%
Comprehensive and confirmed pre-sentence investigation reports	13%	Adult Basic Education, GED, or literacy services	51%
Research-based instruments to assess the risk of re-offending	50%	Job placement and training services	65%
Supervision under community corrections	23%	Substance abuse treatment services	72%
Supervision under general probation	11%	Mental health services	49%
Intensive supervision probation	41%	Life skills training	52%
Graduated sanctions while under probation or community correction supervision	31%	Housing assistance	22%
Electronic devices to monitor an offender's whereabouts	9%	Transportation assistance	30%
Home detention programs	7%	Health care/medical services	41%
Day reporting programs	42%	Family counseling services	63%
Residential work release programs	43%	Parenting programs	62%
Court fines, monetary penalties, and user fees	2%	Child support enforcement services	26%
Community service programs	10%	Faith-based services	27%
Victim restitution programs	23%	Sex offender programs	23%
Victim-offender mediation programs	60%	Providing continuity between prison and community services (i.e., wrap around services)	10%
Research-based instruments to assess service, program, and treatment needs such as educational needs, job aptitude, job skills, substance abuse, and mental health	62%	Community members serving as advisors, mentors, and advocates for offenders	63%
Programs addressing an offender's willingness and motivation to change	11%		

(See survey presentation, pages 45-49)

G. Criminal sentencing law or policy that would reduce the likelihood that an offender would commit another crime upon release from prison

Respondents were asked the following question: Resources permitting, if you could make one change to Indiana's criminal sentencing laws and policies that

would reduce the likelihood that an offender will commit another crime upon release from prison what would it be?

	Percent of Respondents
N	371
More Programs/ Services/Treatment	41%
Less Mandatory, More Discretionary Sentencing	19%
Service Continuum Prison to Community	16%
Enhance Supervision Services	13%
Increase Time Served (More Punitive)	12%
More Risk and Needs Assessment	7%
Other	5%

(See survey presentation, page 51)

VII. OVERVIEW OF THE WORK GROUPS

VII. Overview of the Work Groups:

Testimony in the initial meetings of the Committee was so informative and comprehensive that the Committee Chair established work groups in order to manage the analysis and assessment of the information so that thoughtful and deliberate recommendations could be developed and presented to the full Committee. Three work groups were developed:

- Policy and System Development;
- Criminal Code Revision; and,
- Transitional Services.

A. Function of the Policy and System Development Work Group:

Effective policy and systems development is an important aspect when considering modifications to the criminal sentencing laws. Preliminary testimony indicated that the existence of a clear purpose of the criminal justice system as well as a consistent continuum of services would enhance the efficacy of the criminal justice system thereby increasing public safety. The Policy and System Development Work Group focused on evidence of best practices that exist throughout Indiana in the various components that serve criminal offenders in the probation, community corrections, correctional facility, parole, and community transition programs. A well-defined continuum of services was discussed so as to connect those components and promote a coordinated system of sanctions, services and information that improves public safety while addressing the individual needs of criminal offenders. The work group believed that this system should be based upon a clear public policy that identifies the mission of the criminal justice system and provides integrated policies that compliment the various services and sanctions included in the continuum so as to enhance offender accountability and responsibility.

B. Function of the Criminal Code Revision Work Group:

The criminal code is the basis by which all sentencing decisions are made. Preliminary testimony indicated that sentencing is best left to the discretion of the local judges and that the greatest degree of flexibility within statutory guidelines should be granted to the judges.

Consensus was attained easily that the mission of the criminal justice system must focus on public

safety. Public safety is best achieved by the protection of the victim of the crime and by developing individual strategies to reduce subsequent criminogenic behavior of a specific offender. The Criminal Code Revision Work Group discussed the parameters for judicial discretion when ordering a sanction for the criminal activity as judges are bound to statutory requirements established in statute and case law. The work group believed that the criminal code therefore should represent flexibility to recognize the unique circumstances of a specific criminal offense, as well as provide the equity and consistency that is expected in a criminal justice system that is based on justice and fairness.

During the Criminal Code Revision Work Group process the United State Supreme Court decision in *Blakely v Washington* was published.

This landmark decision became the primary focus of the Criminal Code Revision Work Group. The decision held that:

“A judge may not increase a defendant’s penalty beyond that which would be available *“solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.”* Any fact (other than the fact of a prior conviction) necessary to enhance a penalty beyond that which is authorized solely by the jury verdict or guilty plea must be provided beyond a reasonable doubt, if not formally admitted by the defendant. When a sentencing system imposes an upper sentencing threshold, creating an effective maximum sentence, any facts necessary to go above that threshold are subject to jury determination, as are the standard elements of the offense. Thus, the use of judicially determined facts to increase a sentence beyond an effective maximum sentence violates defendants’ right to a trial by jury”. (*Blakely v Washington*, 542 U.S.____; 124 S.Ct. 2531; No. 02-1632 (June 24, 2004))

C. Function of the Transitional Services Work Group:

State operated correctional facilities are an important component of a full continuum of sanctions and services available to manage

criminal offenders. The effectiveness of institutional programs is a function of offender accountability, the availability of the services in the facility and the availability of follow-up services in the community. Research indicates that various services and programs enhance the transition of the offender from custody into the community. While crimes are committed in the community, virtually all offenders will be released one day back to the community. Data from the Indiana Department of Correction indicates the following percentages of offenders who will be released in the future:

- 3 years or less
61%
- 5 years or less
75%
- 10 years or less
91%

The Transitional Services Work Group recognized that strong families promote safer neighborhoods. Coordinated efforts must continue to support families, increase security in neighborhoods and meet the individual needs of offenders so as to hold the offender accountable. Greater offender accountability must guide the development, implementation and use of community sanctions and services offered through a consistent continuum of service. For this to be successful, services and capacity for these services must be available in the community.

Each work group was responsible to review a variety of items that had been presented or discussed during the testimony received at the initial meetings of the committee. The Committee Chair charged the work groups to develop recommendation drafts that would meet the mandates of the statute and form the basis for thoughtful, deliberate policy positions to improve public safety, maximize current resources and improve the outcomes associated with offender behavior.

VIII. PROMISING PRACTICES

VIII. Promising Practices:

A. Marion County Mental Health Diversion Program:

Testimony was received that presented information from the Indianapolis community that addressed the manner in which people with mental illness are served by local law enforcement and the Courts. This effort decreases commitments to the Department of Correction, but more importantly provides greater public safety and accountability to the community. Law enforcement personnel are trained to identify the difference between criminal and social problems, and for more minor offenses, to divert the offender from a jail setting to a mental health setting for a three day evaluation to confirm the existence of a mental health need. The law enforcement training is modeled after the Memphis Tennessee Police Department's crisis intervention team model and provides a philosophy of accountability and responsibility to the public to address the needs of offenders with mental health concerns. Once referred to the prosecutor and Court, a roundtable staffing of the offender is conducted. If a patient is accepted into the program, a caseworker makes a report to the court on a monthly basis. The program focuses on a patient's responsibility to manage their own

illness, and to recognize the their own problems. This program allows eligible offenders to remain living in the community while following an individualized treatment plan created by a mental health provider and monitored by the Court. The program is voluntary and seeks to identify these individuals as early as possible and facilitate their release from custody into community-based treatment. During this period of participation, medication stabilization and therapy are key foci of the services.

B. The Indiana Offender Reintegration Project:

Information was presented to the Committee about Governor Kernan's initiative that develops a deliberate and thoughtful transition process for offenders being released from a state correctional facility to the community. The project is a multi-disciplinary and inter-agency effort between various relevant state agencies and service providers. The initiative has the following components:

- Development of a model that uses assessment and classification as an on-going process that guides decision-makers about the course of action for an offender;
- Development of a Transition Accountability Plan that describes the actions that must occur to prepare individuals for release from prison to the community, defines the terms and conditions of the release, specifies the services and supervision that will be applied to the offender and describes the offender's eventual discharge to aftercare upon successful completion of supervision;
- Released from Prison to the Community that targets the release date early in the period of incarceration through a process that is fair, objective, equitable and based upon rational policy objectives. The use of a common risk assessment and risk management approach to the

offender should be shared by both the Department of Correction and the community agencies that will be involved in the delivery of supervision and services;

- Supervision and services in the community based upon a case management model;
- The development of structured policies to govern responses to offenders when a violation of the condition of release occurs, as well as when significant accomplishments are achieved;
- Discharge from supervision should be based upon providing an incentive for the offender to conform to the rules of society and upon completion, signal the beginning of a formal reintegration of the offender into society; and,
- Development of an aftercare and services plan that can continue community based assistance to the offender after the end of formal supervision.

C. Community Assessment Accountability Restoration and Reintegration Services (C.A.R.S):

C.A.R.S. is Indiana's community corrections response to "what works" in effective community-based correction interventions. It is an overarching philosophy to the concept of community corrections as an alternative to incarceration. It is designed to maximize the opportunity for local determination of correctional services and to protect the community with proactive community supervision and structured reintegration services for selected types of offenders.

The goals are to:

- Expand the continuum of community-based sanctions;

- Provide a safe and cost-effective method of reintegration of select offenders into the community;
- Provide a broad spectrum of effective integration services offenders;
- Reduce the population of local, and state correctional facilities;
- Provide structured supervision, sanctions and services coordinated from a centralized location;
- Serve as a clearinghouse for correctional services and planning;
- Utilize an effective assessment process to identify appropriate referrals; and,
- Demonstrate the effectiveness of its programming through reduced recidivism.

D. Allen County Community Corrections Program:

The Allen County Community Corrections Program has distinguished itself as a promising practice due to:

- A commitment to consistent and comprehensive forensic assessment to determine the needs of an offender who has been ordered into to the program;
- A comprehensive array of community sanctions (including intensive probation, electronic monitoring, home detention, day reporting, community transition and county jail incarceration) and services to address the needs of the offender while providing appropriate monitoring to promote public safety;
- The integration of funding streams and community support to sustain current programming and services;
- Identification of performance standards and evaluation of outcomes for the offenders in the project.

The four areas that are most noteworthy include
a) the Re-entry Court Project, b) Job

Readiness/Employment Academy/Blue jacket, Inc, c) Enhanced Probation/Corrections Supervision and d) Forensic Assessment.

While the services provided are comprehensive, the consistency in application and expectations is extraordinary. The forensic assessment includes an education/intelligence assessment (Kaufman Brief Intelligence test), a personality assessment (MMPI-II/PAI), a clinical interview with a mental health therapist, an assessment for psychopathy (PCL-R) and other risk assessments including spousal abuse, substance abuse, sex offender and violence risk assessments when warranted, based upon the current charge of past behavior.

Based upon the offender's needs identified in this process, an individual reintegration plan is created for each offender. The Court uses pre-established graduated sanctions to reward positive progress and sanctions are ordered for negative conduct. Positive reviews at 90 or 120 days on the electronic monitoring portion can result in a 30-day reduction on that portion of the supervision. Faith based organizations and numerous service providers are tapped to assist in meeting the specific needs of an individual offender and 24 hour supervision is supplied by special deputies of the Allen County Sheriff's Department who conduct random employment and home visits. A six-week cognitive skill curriculum addresses adequate social adjustment and focuses on reducing the day-to-day problems participants have in life. The program focuses on what alternatives the offender has in making choices. It does not focus on what the offender is doing wrong. Partnerships exist with all community service agencies that address the food, clothing, shelter, employment and psychosocial needs of offenders.

**IX. SUMMARY OF
RECOMMENDATIONS AND
PRELIMINARY DRAFTS**

**IX. Summary of
Recommendations and
Preliminary Drafts:**

A. Listing of Recommendations:

The work groups met four times and developed recommendation drafts that were presented to the Committee on October 20, 2004. In all, the Committee voted on 11 recommendations. The recommendations are:

- 1) Development of a "Purpose Statement" for the criminal code to provide a clear statement of purpose and philosophy that promotes public safety and the use of appropriate sanctions based upon principles of reformation. The "Purpose Statement" emphasizes the importance of policy integration and cooperation among the various components of the criminal justice and correctional system while setting forth the means and goals to be considered in establishing criminal penalties and imposing sentence without creating a cause of action or superceding any statute, and not being used in any litigation to obtain any form of relief.

The Committee approved PD 3532 (Appendix 1), which is a proposed purpose statement bill draft in a 13-0 roll call vote.

- 2) Statutory changes to the criminal code that require the State prove the existence of aggravating circumstances beyond a reasonable doubt before a person convicted of a felony may receive a sentence greater than the presumptive, unless the person has one or more prior unrelated convictions; 2) requires the defendant be provided with notice of the State's intention to seek a sentence greater than the presumptive; 3) requires a jury to reconvene to hear evidence on aggravating circumstances if a person is convicted of a felony in a jury trial; and 4) permits a defendant to waive their right to have a jury determine the existence of any aggravating circumstances. The Committee approved PD 3597 (Appendix 2), which is a bill draft incorporating these proposed changes in a 12-0 roll call vote. Judge Good voted as Chief Justice Shepard's designee and abstained from the vote in the event the issue would ever come before the Indiana Supreme Court.
- 3) Development of a consistent method for the Courts, County Sheriff or Community Corrections Program to award and deprive time-based credit. The Committee approved this recommendation in a roll call vote 13-0.
- 4) Extend recognition and support to the work of the Risk Assessment Task Force of the Indiana Offender's Reintegration Project as the authoritative forum to develop common risk assessment processes for use among the various components of the criminal justice

and corrections system. The Committee approved this recommendation in a 13-0 roll call vote.

- 5) The expansion and promotion of alternative institutional placements, including without limitations, work release, electronic monitoring and transitional housing as intermediate sanctions that would be accessible to each Court with criminal jurisdiction, as well as the support and use of other technology to assist in monitoring offenders in the community so as to enhance public safety and reduce admissions to the Department of Correction. The Committee approved this recommendation in a 13-0 roll call vote.
- 6) The clarification of the existing statute to permit the Court to order execution of all or part of a probationer's suspended sentence if a probationer has violated a condition of probation. This ability would provide greater flexibility to the Court to manage offenders safely in the community and thereby decrease commitments to the Department of Correction. The Committee approved PD 3042 (Appendix 3) which is a bill draft incorporating these proposed changes in a 13-0 roll call vote.
- 7) Modify the reinstatement fees for driving offenses by the Bureau of Motor Vehicles and/or empower Courts to modify or waive the fees so as to decrease the likelihood that drivers who cannot afford the incremental reinstatement fees do not eventually become incarcerated only for that offense. The Committee approved this recommendation in a 13-0 roll call vote.

- 8) Amend the existing statute that allows a Court to order an offender on home detention to wear a monitoring device to transmit the location of an offender at all times. The Committee approved PD 3673 (Appendix 4) which is a bill draft incorporating these proposed changes in a 13-0 roll call vote.
- 9) The modification of the statute to permit a Court to hold a new probation hearing and modify a probationer's conditions of probation at any time during the probationary period. The Committee approved PD 3040 (Appendix 5) which is a bill draft incorporating this proposed change in a 13-0 roll call vote.
- 10) Amendment of the existing statute to require a jury to determine whether a person is a repeat sexual offender if a jury tried a person. The present statute requires the Court to determine whether a person is a repeat sexual offender if the person received a bench trial or a trial by jury. The Committee approved PD 3041 (Appendix 6) which is a bill draft incorporating this proposed change in a 12-0 roll call vote. Judge Good voted as Chief Justice Shepard's designee and abstained from the vote in the event the issue would ever come before the Indiana Supreme Court.
- 11) The use of alternative institutional placements as both a "step up" and "step down" process. The Committee approved this recommendation in a 13-0 roll call vote.

B. Passage of the Final Report:

The Committee voted to adopt this final report 13-0 in a roll call vote.

Votes were taken by the study committee on October 20, 2004 at a public meeting and are recorded in the summary below:

Member	Rec 1	Rec 2	Rec 3	Rec 4	Rec 5	Rec 6	Rec 7	Rec 8	Rec 9	Rec 10	Rec 11	
Crawford	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Howard	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Hudson	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Johnson	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Landis	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Matsey (1)												
Messer	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
McCormack	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Ridley-Turner	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Pratt	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Proffitt	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Shepard (2)	Y	AB	Y	Y	Y	Y	Y	Y	Y	AB	Y	
Tew	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Williams (1)												
Long, Chair	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	

(1) Schedule conflict prohibited attendance at the meeting

(2) Richard P. Good, Jr. sat as proxy for the Chief Justice who had a schedule conflict

AB = Abstained from the vote

X. NEXT STEPS

X. Next Steps:

At the October 20, 2004 committee meeting, the Committee members discussed the final recommendations and discussed the relationship of the work of the Committee with the following collateral and contemporary group:

- The Indiana Offender Reintegration Project;
- The Criminal Law Study Commission;
- The on-going work of the Indiana Judicial Conference and Judicial Center; and,
- The Forensic Diversion Study Committee

**XI. WITNESS LIST AND
TESTIMONY**

XI. Witness List and Testimony:

September 12, 2003

- Discussion of organization and topic areas

October 9, 2003

- James M. Hmurovich, Consultant, "Overview of Community Corrections Issues"
- Todd McCormack, Chief Probation Officer, Hendricks County, "Hendricks County Community Corrections"
- Sheila Hudson, Executive Director, Allen County Community Corrections, "Allen County Community Corrections Program"
- Gary Paarlberg, Director of Programs, Lake County Community Corrections Program, "Lake County Community Corrections"

October 30, 2003

- James M. Hmurovich, Consultant, "Overview of Probation Issues"
- Joe Koenig, Executive Director, Criminal Justice Institute, "Lessons and Best Practices"
- Jane Seigel, Executive Director, Indiana Judicial Center, "The Role of the Judicial Center and Probation"
- Susan Lightfoot, Chief Probation Officer, Henry County, "The Unified Probation Model"

- Linda Brady, Chief Probation Officer, Monroe County, “The Court Services Model
- Honorable John Surbeck, Judge Allen County Criminal Court, “The Allen County Project”

December 11, 2003

- James M. Hmurovich, Consultant, “Overview of Mental Illness Issues”
- Dr. George Parker M.D., Director of Forensic Psychiatry, IU School of Medicine, “Understanding Mental Illness and the Criminal Justice System”
- Senator Connie Lawson, Chair, Mental Health Commission, “Overview of Recommendations of the Mental Health Commission”
- Gordon Hendry, Special Counsel, Office of the Mayor, Indianapolis, “Assessing Mental Illness on the Law Enforcement Front Lines”
- Jerry Barker, Chief of Police, Indianapolis, Indiana
- Honorable Evan Goodman, Judge, Marion County Superior Court, “A Community Response to Mental Illness”
- Lou Ransdell, Deputy Prosecutor, Marion County Prosecutor’s Office, “A Community’s Response to Mental Illness”
- Robert W. Hammerle, Attorney, “A Community’s Response to Mental Illness”
- Randy Koester, Deputy Commissioner, Indiana Department of Mental Health, “Addressing the Mental Health Needs of Offenders Committed to the Department of Correction”
- Suzanne Clifford, Director, Division of Mental Health and Addictions, Family and Social Services Administration, “Strategic Planning for Forensic Mental Health Issues”

May 6, 2004

- Evelyn Ridley-Turner, Commissioner, Indiana Department of Correction, “Overview of the Department of Correction”

- Randy Koester, Deputy Commissioner, Indiana Department of Correction, "Description of the Intake, Assessment and Service Delivery Processes and System"
- Kathy Lisby, Director of Planning, Indiana Department of Correction, "Demographics of the Offender Population"
- Jerry Vance, Director of Substance Abuse Programs, Indiana Department of Correction, "Discussion of Department of Correction Programs"
- Mike Brown, Director of Community Services, Indiana Department of Correction, "Release and Community Supervision Services"
- Bob Ohlemiller, Deputy Commissioner, Indiana Department of Correction, "Parole and Probation"
- James M. Hmurovich, Consultant, "Review of Recommendations from Prior Committees" and "Discussion of the Work Group Format"

June 2, 2004

- Dan Wilhelm, Director, State Sentencing and Corrections Program, Vera Institute of Justice
- Barbara Tombs, Executive Director, Minnesota Sentencing Commission, "Sentencing Policy Perspectives from Kansas and Minnesota"
- Robert Lee Guy, Director, North Carolina Division of Community Corrections, "The Evolution of Community Corrections, A Decade of Change, North Carolina, 1993-2003"

July 7, 2004

- Committee members met in work groups

August 18, 2004

- Committee members met in work groups
- Frank Bowman, Professor, Indiana University School of Law, "Impact of the Blakely Decision"

September 15, 2004

- Committee members met in work groups

October 6, 2004

- Committee members met in work groups
- Mary Ziemba Davis, Indiana Criminal Justice Institute, "Sentencing Survey Results"
- Brent Myers, Indiana Criminal Justice Institute, "Sentencing Survey Results"

October 20, 2004

- The Committee members met to discuss final recommendations

October 27, 2004

- The Committee members met to vote upon the final recommendations

XII. APPENDICES

APPENDIX 1

**PRELIMINARY DRAFT
No. 3532**

**PREPARED BY
LEGISLATIVE SERVICES AGENCY
2005 GENERAL ASSEMBLY**

DIGEST

Citations Affected: IC 35-32-0.5.

Synopsis: Criminal code general purpose statement. Provides that the criminal code must be founded on the principle of reformation, not vindictive justice, and establishes the means and goals to be considered in establishing criminal penalties and imposing sentences. Specifies that these provisions do not create a cause of action or supersede any statute, and may not be used in litigation to obtain any form of relief.

Effective: July 1, 2005.

First Regular Session 114th General Assembly (2005)

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 35-32-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Comment [Comment1]: SOURCE : IC 35-32-0.5; (05)PD3532.1.

Chapter 0.5. Purpose of the Criminal Code

Sec. 1. The criminal code shall be founded on the principle of reformation, not vindictive justice.

Sec. 2. The primary purpose of sentencing a person convicted of a crime is to do the following:

- (1) Protect the public and deter criminal behavior.**
- (2) Impose a punishment commensurate with the nature of the offense and the harm caused by the offense, taking into account circumstances that may diminish or increase the offender's culpability.**
- (3) Assist the rehabilitation of an offender.**
- (4) Assist with the offender's reentry and reintegration into the community when appropriate.**
- (5) Provide restitution, reparation, and restoration to victims of crime.**

Sec. 3. To achieve the purpose described in section 2 of this chapter, it is the declared public policy of the state to do the following:

- (1) Proscribe conduct that unjustifiably and inexcusably causes or threatens substantial harm to an individual or the public interest.**
- (2) Give fair notice of the nature of the conduct proscribed and of the sentence authorized upon conviction.**
- (3) Clearly define the act or omission and the accompanying mental state that constitute each offense.**
- (4) Reasonably differentiate between serious and minor offenses, and punish offenses proportionately.**
- (5) Hold an offender accountable by requiring the offender to**

lead a law abiding life.

(6) Encourage an offender to assume personal responsibility and assist the offender in finding motivation to change.

(7) Advance the use of generally accepted scientific methods and knowledge in sentencing an offender.

(8) Impose a sentence that is neutral with respect to an offender's race, gender, religion, national origin, or social or economic status.

(9) Encourage judicial discretion in developing alternatives to incarceration for offenders who are not habitual, nonconforming, or chronic offenders.

(10) Avoid excessive, disproportionate, or arbitrary punishment.

(11) Provide a continuum of sanctions that increase in direct proportion to the seriousness of the offense and the extent of the offender's criminal history.

(12) Define and coordinate the powers, duties, information sharing, and functions of the:

(A) courts;

(B) agencies; and

(C) administrative offices;

responsible for working with offenders.

Sec. 4. This chapter does not:

(1) create a cause of action;

(2) create a basis for a person to:

(A) challenge a:

(i) charging decision;

(ii) conviction; or

(iii) sentence;

(B) obtain a stay of trial; or

(C) compel a new trial;

(3) provide grounds for a person:

(A) charged or convicted of an offense; or

(B) alleged or adjudicated to be a delinquent;

to obtain any form of relief; or

(4) supersede any statute.

APPENDIX 2

PRELIMINARY DRAFT
No. 3597

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2005 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 35-34-1-2.6; IC 35-35; IC 35-37-2.5; IC 35-38-1; IC 35-50.

Synopsis: Bifurcated sentencing. Allows a court to impose a sentence greater than the presumptive sentence only if: (1) the state proves the existence of an aggravating circumstance beyond a reasonable doubt; or (2) the defendant has one or more prior unrelated convictions. Makes conforming amendments.

Effective: July 1, 2005.

First Regular Session 114th General Assembly (2005)

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 35-34-1-2.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2.6. The state may seek to have a person charged with a felony sentenced to a penalty greater than the presumptive sentence by alleging, on a page separate from the rest of the charging instrument, the existence of one (1) or more aggravating circumstances listed in IC 35-37-2.5-2.**

Comment [Comment1]: SOURCE : IC 35-34-1-2.6; (05)PD3597.1.

(b) The state must file the document described in subsection (a) not later than:

- (1) five (5) days after the initial hearing, if the trial is scheduled to take place in (30) days or less; or**
- (2) thirty (30) days before the trial is scheduled to take place.**

(c) Upon a showing of good cause, the court may:

- (1) grant a continuance for filing; or**
- (2) permit the state to amend;**

the document described in subsection (a).

SECTION 2. IC 35-35-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The court shall not accept a plea of guilty or guilty but mentally ill at the time of the crime without first determining that the defendant:

Comment [Comment3]: SOURCE : IC 35-35-1-2; (05)PD3597.2.

- (1) understands the nature of the charge; ~~against him;~~**
- (2) has been informed that by ~~his~~ the plea ~~he~~ the defendant waives ~~his~~ the defendant's rights to:**
 - (A) a public and speedy trial by jury;**
 - (B) confront and cross-examine ~~the~~ adverse witnesses; ~~against him;~~**
 - (C) have compulsory process for obtaining witnesses; ~~in his favor;~~ and**
 - (D) require the state to prove ~~his~~ guilt beyond a reasonable doubt at a trial at which the defendant may not be compelled to testify against ~~himself~~ the defendant;**

(3) has been informed of the maximum possible sentence and minimum sentence for the crime charged and any possible increased sentence by reason of the fact of a prior conviction or convictions, and any possibility of the imposition of consecutive sentences;

(4) has been informed that by pleading guilty, the defendant waives the right to have a jury determine the aggravating circumstances;

(4) (5) has been informed that the ~~person~~ **defendant** will lose the right to possess a firearm if the person is convicted of a crime of domestic violence (IC 35-41-1-6.3); and

(5) (6) has been informed that if:

(A) there is a plea agreement as defined by IC 35-35-3-1; and

(B) the court accepts the plea;
the court is bound by the terms of the plea agreement.

(b) A defendant in a misdemeanor case may waive the rights under subsection (a) by signing a written waiver.

(c) Any variance from the requirements of this section that does not violate a constitutional right of the defendant is not a basis for setting aside a plea of guilty.

SECTION 3. IC 35-35-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter:

"Plea agreement" means an agreement between a prosecuting attorney and a defendant concerning the disposition of a felony or misdemeanor charge.

"Presumptive sentence" means the penalty prescribed by IC 35-50-2 without consideration of mitigating **circumstances, or aggravating circumstances, or a prior conviction.**

"Prosecuting attorney" includes a deputy prosecuting attorney.

"Recommendation" means a proposal that is part of a plea agreement made to a court that:

(1) a felony charge be dismissed; or

(2) a defendant, if ~~he~~ **the defendant** pleads guilty to a felony charge, receive less than the presumptive sentence.

"Victim" means a person who has suffered harm as a result of a crime.

SECTION 4. IC 35-37-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 2.5. Determination of Aggravating Circumstances

Sec. 1. This chapter applies whenever:

(1) a person has been convicted of a felony; and

(2) the state has sought to have the person sentenced to a penalty greater than the presumptive sentence under IC 35-34-1-2.6.

Comment [Comment4]: SOURCE : IC 35-35-3-1; (05)PD3597.3.

Comment [Comment5]: SOURCE : IC 35-37-2.5; (05)PD3597.4.

Sec. 2. As used in this section, "aggravating circumstance" means the following:

(1) The harm, injury, loss, or damage suffered by the victim was:

(A) significant; and

(B) greater than the elements necessary to prove the commission of the offense.

(2) The person has a history of criminal or delinquent behavior.

(3) The victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age.

(4) The person:

(A) committed a crime of violence (IC 35-50-1-2); and

(B) knowingly committed the offense in the presence or within hearing of an individual who:

(i) was less than eighteen (18) years of age at the time the person committed the offense; and

(ii) is not the victim of the offense.

(5) The person violated a protective order issued against the person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or IC 34-4-5.1 before their repeal), a workplace violence restraining order issued against the person under IC 34-26-6, or a no contact order issued against the person.

(6) The person has recently violated the conditions of any probation, parole, or pardon granted to the person.

(7) The victim of the crime was mentally or physically infirm.

(8) The person was in a position having care, custody, or control of the victim.

(9) The injury to or death of the victim of the crime was the result of shaken baby syndrome (as defined in IC 16-41-40-2).

(10) The person threatened to harm the victim or a witness if the victim or witness told anyone about the offense.

(11) The person:

(A) committed trafficking with an inmate under IC 35-44-3-9; and

(B) is an employee of the penal facility.

Sec. 3. (a) If the person was convicted of the felony in a jury trial, the jury shall reconvene to hear evidence of the aggravating circumstances. If the person was convicted of the felony by trial to the court without a jury, the court alone shall hear evidence of the aggravating circumstances.

(b) If the person has waived the right to have a jury determine the aggravating circumstances, the court alone shall hear evidence of the aggravating

circumstances.

Sec. 4. (a) A person is subject to a sentence greater than the presumptive sentence if the jury (in a case tried by a jury) or the court (in a case tried by the court or where the person has waived the right to have a jury determine the aggravating circumstances) finds that the state has proved beyond a reasonable doubt the existence of at least one (1) aggravating circumstance.

(b) A person is subject to a sentence greater than the presumptive sentence if the court finds at a sentencing hearing conducted under IC 35-38-1-3 that the person has a prior unrelated conviction.

SECTION 5. IC 35-38-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. Before sentencing a person for a felony, the court must conduct a hearing to consider the facts and circumstances relevant to sentencing. The person is entitled to subpoena and call witnesses and to present information in ~~his~~ **the person's** own behalf. The court shall make a record of the hearing, including:

- (1) a transcript of the hearing;
- (2) a copy of the presentence report; and
- (3) ~~if the court finds aggravating circumstances or mitigating circumstances, a statement of the court's reasons for selecting the sentence that it imposes, if:~~
 - (A) the court finds mitigating circumstances;**
 - (B) the person is subject to a sentence greater than the presumptive sentence under IC 35-37-2.5-4(a); or**
 - (C) the court finds that the person has a prior unrelated conviction.**

Comment [Comment6]: SOURCE : IC 35-38-1-3; (05)PD3597.5.

SECTION 6. IC 35-38-1-7.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7.1. (a) In determining what sentence to impose for a crime, the court shall consider **any**:

- (1) aggravating circumstances found by the jury (in a case tried by a jury) or by the court (in a case tried by the court or where the person has waived the right to have a jury determine the aggravating circumstances) in accordance with IC 35-37-2.5; and**
 - (2) prior unrelated convictions found by the court.**
- ~~(1) the risk that the person will commit another crime;~~
- ~~(2) the nature and circumstances of the crime committed;~~
- ~~(3) the person's:~~
 - ~~(A) prior criminal record;~~
 - ~~(B) character; and~~
 - ~~(C) condition;~~
- ~~(4) whether the victim of the crime was less than twelve (12) years of age or at least sixty-five (65)~~

Comment [Comment7]: SOURCE : IC 35-38-1-7.1; (05)PD3597.6.

years of age;

(5) whether the person committed the offense in the presence or within hearing of a person who is less than eighteen (18) years of age who was not the victim of the offense;

(6) whether the person violated a protective order issued against the person under IC 34-26-5 (or IC 31-1-11.5; IC 34-26-2; or IC 34-4-5.1 before their repeal), a workplace violence restraining order issued against the person under IC 34-26-6, or a no contact order issued against the person; and

(7) any oral or written statement made by a victim of the crime.

(b) The court may consider the following factors as aggravating circumstances or as favoring imposing consecutive terms of imprisonment:

(1) The person has recently violated the conditions of any probation, parole, or pardon granted to the person.

(2) The person has a history of criminal or delinquent activity.

(3) The person is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a penal facility.

(4) Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime.

(5) The victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age.

(6) The victim of the crime was mentally or physically infirm.

(7) The person committed a forcible felony while wearing a garment designed to resist the penetration of a bullet.

(8) The person committed a sex crime listed in subsection (e) and:

(A) the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) and involved the sex organ of one (1) person and the mouth, anus, or sex organ of another person;

(B) the person had knowledge that the person was a carrier of HIV; and

(C) the person had received risk counseling as described in subsection (g).

(9) The person committed an offense related to controlled substances listed in subsection (f) if:

(A) the offense involved:

(i) the delivery by any person to another person;
or

(ii) the use by any person on another person;
of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of

transmission of HIV by involving percutaneous contact;

(B) the person had knowledge that the person was a carrier of the human immunodeficiency virus (HIV); and

(C) the person had received risk counseling as described in subsection (g).

(10) The person committed the offense in an area of a consolidated or second class city that is designated as a public safety improvement area by the Indiana criminal justice institute under IC 36-8-19.5.

(11) The injury to or death of the victim of the crime was the result of shaken baby syndrome (as defined in IC 16-41-40-2).

(12) Before the commission of the crime, the person administered to the victim of the crime, without the victim's knowledge, a sedating drug or a drug that had a hypnotic effect on the victim, or the person had knowledge that such a drug had been administered to the victim without the victim's knowledge.

(13) The person:

(A) committed trafficking with an inmate under IC 35-44-3-9; and

(B) is an employee of the penal facility.

(14) The person committed the offense in the presence or within hearing of a person who is less than eighteen (18) years of age who was not the victim of the offense.

(e) **(b)** The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:

(1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.

(2) The crime was the result of circumstances unlikely to recur.

(3) The victim of the crime induced or facilitated the offense.

(4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

~~(d)~~ **(c)** The criteria listed in ~~subsections~~ **subsection (b)** and ~~(e)~~ do not limit the ~~matters~~ **mitigating circumstances** that the court may consider in determining the sentence.

~~(e)~~ For the purposes of this article, the following crimes are considered sex crimes:

- ~~(1) Rape (IC 35-42-4-1).~~
- ~~(2) Criminal deviate conduct (IC 35-42-4-2).~~
- ~~(3) Child molesting (IC 35-42-4-3).~~
- ~~(4) Child seduction (IC 35-42-4-7).~~
- ~~(5) Prostitution (IC 35-45-4-2).~~
- ~~(6) Patronizing a prostitute (IC 35-45-4-3).~~
- ~~(7) Incest (IC 35-46-1-3).~~
- ~~(8) Sexual misconduct with a minor under IC 35-42-4-9(a).~~

~~(f)~~ For the purposes of this article, the following crimes are considered offenses related to controlled substances:

- ~~(1) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).~~
- ~~(2) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).~~
- ~~(3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).~~
- ~~(4) Dealing in a schedule V controlled substance (IC 35-48-4-4).~~
- ~~(5) Possession of cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-6).~~
- ~~(6) Possession of a controlled substance (IC 35-48-4-7).~~
- ~~(7) Dealing in paraphernalia (IC 35-48-4-8.5).~~
- ~~(8) Possession of paraphernalia (IC 35-48-4-8.3).~~
- ~~(9) Offenses relating to registration (IC 35-48-4-14).~~

~~(g)~~ For the purposes of this section, a person received risk counseling if the person had been:

- ~~(1) notified in person or in writing that tests have confirmed the presence of antibodies to the human immunodeficiency virus (HIV) in the person's blood; and~~
- ~~(2) warned of the behavior that can transmit HIV.~~

SECTION 7. IC 35-50-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. The court shall fix the penalty of and sentence a person convicted of an offense. **However, if the offense is a felony, a**

Comment [Comment8]: SOURCE : IC 35-50-1-1; (05)PD3597.7.

court may not impose a sentence greater than the presumptive sentence unless the person is subject to a sentence:

- (1) greater than the presumptive sentence under IC 35-37-2.5-4(a) based on the existence of an aggravating circumstance;**
- (2) greater than the presumptive sentence based on the existence of a prior unrelated conviction found by the court; or**
- (3) otherwise subject to enhancement.**

SECTION 8. IC 35-50-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) As

Comment [Comment9]: SOURCE : IC 35-50-1-2; (05)PD3597.8.

used in this section, "crime of violence" means:

- (1) murder (IC 35-42-1-1);
- (2) attempted murder (IC 35-41-5-1);
- (3) voluntary manslaughter (IC 35-42-1-3);
- (4) involuntary manslaughter (IC 35-42-1-4);
- (5) reckless homicide (IC 35-42-1-5);
- (6) aggravated battery (IC 35-42-2-1.5);
- (7) kidnapping (IC 35-42-3-2);
- (8) rape (IC 35-42-4-1);
- (9) criminal deviate conduct (IC 35-42-4-2);
- (10) child molesting (IC 35-42-4-3);
- (11) sexual misconduct with a minor as a Class A felony under IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2);
- (12) robbery as a Class A felony or a Class B felony (IC 35-42-5-1);
- (13) burglary as a Class A felony or a Class B felony (IC 35-43-2-1); or
- (14) causing death when operating a motor vehicle (IC 9-30-5-5).

(b) As used in this section, "episode of criminal conduct" means offenses or a connected series of offenses that are closely related in time, place, and circumstance.

(c) Except as provided in subsection (d) or (e), the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the:

- (1) aggravating circumstances in IC 35-37-2.5-2;**
and
- (2) mitigating circumstances in IC 35-38-1-7.1(b)**
and IC 35-38-1-7.1(c); and
- (3) existence of a prior conviction;**

in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the presumptive sentence for a felony which is one (1) class of felony

higher than the most serious of the felonies for which the person has been convicted.

(d) If, after being arrested for one (1) crime, a person commits another crime:

(1) before the date the person is discharged from probation, parole, or a term of imprisonment imposed for the first crime; or

(2) while the person is released:

(A) upon the person's own recognizance; or

(B) on bond;

the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed.

(e) If a court determines under IC 35-50-2-11 that a person used a firearm in the commission of the offense for which the person was convicted, the term of imprisonment for the underlying offense and the additional term of imprisonment imposed under IC 35-50-2-11 must be served consecutively.

SECTION 9. IC 35-50-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) A person who commits murder shall be imprisoned for a fixed term of fifty-five (55) years, with not more than ten (10) years added for aggravating circumstances or **a prior conviction, and** not more than ten (10) years subtracted for mitigating circumstances. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

Comment [Comment10]: SOURCE: IC 35-50-2-3; (05)PD3597.9.

(b) Notwithstanding subsection (a), a person who was:

(1) at least eighteen (18) years of age at the time the murder was committed may be sentenced to:

(A) death; or

(B) life imprisonment without parole; and

(2) at least sixteen (16) years of age but less than eighteen (18) years of age at the time the murder was committed may be sentenced to life imprisonment without parole;

under section 9 of this chapter unless a court determines under IC 35-36-9 that the person is a mentally retarded individual.

SECTION 10. IC 35-50-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. A person who commits a Class A felony shall be imprisoned for a fixed term of thirty (30) years, with not more than twenty (20) years added for aggravating circumstances or **a prior conviction, and** not more than ten (10) years subtracted for mitigating circumstances. In addition, ~~he~~ **the person** may be fined not more than ten thousand dollars (\$10,000).

Comment [Comment11]: SOURCE: IC 35-50-2-4; (05)PD3597.10.

SECTION 11. IC 35-50-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. A person who commits a Class B felony shall be imprisoned for a fixed term of ten (10) years, with not more than ten (10) years added for aggravating circumstances or **a prior conviction, and** not more than four (4) years subtracted

Comment [Comment12]: SOURCE: IC 35-50-2-5; (05)PD3597.11.

for mitigating circumstances. In addition, ~~he~~ **the person** may be fined not more than ten thousand dollars (\$10,000).

SECTION 12. IC 35-50-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A person who commits a Class C felony shall be imprisoned for a fixed term of four (4) years, with not more than four (4) years added for aggravating circumstances or **a prior conviction, and** not more than two (2) years subtracted for mitigating circumstances. In addition, ~~he~~ **the person** may be fined not more than ten thousand dollars (\$10,000).

Comment [Comment13]: SOURCE: IC 35-50-2-6; (05)PD3597.12.

(b) Notwithstanding subsection (a), if a person has committed nonsupport of a child as a Class C felony under IC 35-46-1-5, upon motion of the prosecuting attorney, the court may enter judgment of conviction of a Class D felony under IC 35-46-1-5 and sentence the person accordingly. The court shall enter in the record detailed reasons for the court's action when the court enters a judgment of conviction of a Class D felony under this subsection.

SECTION 13. IC 35-50-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) A person who commits a Class D felony shall be imprisoned for a fixed term of one and one-half (1 1/2) years, with not more than one and one-half (1 1/2) years added for aggravating circumstances or **a prior conviction, and** not more than one (1) year subtracted for mitigating circumstances. In addition, ~~he~~ **the person** may be fined not more than ten thousand dollars (\$10,000).

Comment [Comment14]: SOURCE: IC 35-50-2-7; (05)PD3597.13.

(b) Notwithstanding subsection (a), if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony if:

- (1) the court finds that:
 - (A) the person has committed a prior, unrelated felony for which judgment was entered as a conviction of a Class A misdemeanor; and
 - (B) the prior felony was committed less than three (3) years before the second felony was committed;
- (2) the offense is domestic battery as a Class D felony under IC 35-42-2-1.3; or
- (3) the offense is possession of child pornography (IC 35-42-4-4(c)).

The court shall enter in the record, in detail, the reason for its action whenever it exercises the power to enter judgment of conviction of a Class A misdemeanor granted in this subsection.

SECTION 14. IC 35-50-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) As used in this section:

- (1) "Drug" means a drug or a controlled substance

Comment [Comment15]: SOURCE: IC 35-50-2-10; (05)PD3597.14.

(as defined in IC 35-48-1).

(2) "Substance offense" means a Class A misdemeanor or a felony in which the possession, use, abuse, delivery, transportation, or manufacture of alcohol or drugs is a material element of the crime. The term includes an offense under IC 9-30-5 and an offense under IC 9-11-2 (before its repeal). ~~July 1, 1991).~~

(b) The state may seek to have a person sentenced as a habitual substance offender for any substance offense by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated substance offense convictions.

(c) After a person has been convicted and sentenced for a substance offense committed after sentencing for a prior unrelated substance offense conviction, the person has accumulated two (2) prior unrelated substance offense convictions. However, a conviction does not count for purposes of this subsection if:

- (1) it has been set aside; or
- (2) it is a conviction for which the person has been pardoned.

(d) If the person was convicted of the substance offense in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing, under IC 35-38-1-3.

(e) A person is a habitual substance offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated two (2) prior unrelated substance offense convictions.

(f) The court shall sentence a person found to be a habitual substance offender to an additional fixed term of at least three (3) years but not more than eight (8) years imprisonment, to be added to the term of imprisonment imposed under IC 35-50-2 or IC 35-50-3. If the court finds that:

- (1) three (3) years or more have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last prior unrelated substance offense conviction and the date the person committed the substance offense for which the person is being sentenced as a habitual substance offender; or
- (2) all of the substance offenses for which the person has been convicted are substance offenses under IC 16-42-19 or IC 35-48-4, the person has not been convicted of a substance offense listed in section 2(b)(4) of this chapter, and the total number of convictions that the person has for:

(A) dealing in or selling a legend drug under IC 16-42-19-27;

(B) dealing in cocaine or a narcotic drug (IC 35-48-

- 4-1);
- (C) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);
- (D) dealing in a schedule IV controlled substance (IC 35-48-4-3); and
- (E) dealing in a schedule V controlled substance (IC 35-48-4-4);

does not exceed one (1);

then the court may reduce the additional fixed term. However, the court may not reduce the additional fixed term to less than one (1) year.

(g) If a reduction of the additional year fixed term is authorized under subsection (f), the court may also consider the aggravating ~~or~~ **circumstances in IC 35-37-2.5-2, the mitigating circumstances in IC 35-38-1-7.1, and the existence of a prior unrelated conviction** to:

- (1) decide the issue of granting a reduction; or
- (2) determine the number of years, if any, to be subtracted under subsection (f).

SECTION 15. IC 35-50-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) As used in this section, "firearm" has the meaning set forth in IC 35-47-1-5.

(b) As used in this section, "offense" means:

- (1) a felony under IC 35-42 that resulted in death or serious bodily injury;
- (2) kidnapping; or
- (3) criminal confinement as a Class B felony.

(c) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed an offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally used a firearm in the commission of the offense.

~~(d) If after a sentencing hearing a court finds that a person who committed an offense used a firearm in the commission of the offense, the court may sentence the person to an additional fixed term of imprisonment of five (5) years.~~

(d) If the person was convicted of the offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(e) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person knowingly or intentionally used a firearm in the commission of the offense, the court may sentence the person to an additional fixed term of imprisonment of five (5) years.

SECTION 16. IC 35-50-2-13 IS AMENDED TO READ

Comment [Comment16]: SOURCE: IC 35-50-2-11; (05)PD3597.15.

Comment [Comment17]: SOURCE: IC 35-50-2-13; (05)PD3597.16.

AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed an offense of dealing in a controlled substance under IC 35-48-4-1 through IC 35-48-4-4 sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally:

- (1) used a firearm; or
 - (2) possessed a:
 - (A) handgun in violation of IC 35-47-2-1;
 - (B) sawed-off shotgun in violation of IC 35-47-5-4.1; or
 - (C) machine gun in violation of IC 35-47-5-8;
- while committing the offense.

~~(b) If after a sentencing hearing a court finds that a person committed an offense as described in subsection (a), the court may sentence the person to an additional fixed term of imprisonment of not more than five (5) years, except as follows:~~

- ~~(1) If the firearm is a sawed-off shotgun, the court may sentence the person to an additional fixed term of imprisonment of not more than ten (10) years.~~
- ~~(2) If the firearm is a machine gun or is equipped with a firearm silencer or firearm muffler, the court may sentence the person to an additional fixed term of imprisonment of not more than twenty (20) years. The additional sentence under this subdivision is in addition to any additional sentence imposed under section 11 of this chapter for use of a firearm in the commission of an offense.~~

(b) If the person was convicted of the offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(c) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person knowingly or intentionally committed an offense as described in subsection (a), the court may sentence the person to an additional fixed term of imprisonment of not more than five (5) years, except as follows:

- (1) If the firearm is a sawed-off shotgun, the court may sentence the person to an additional fixed term of imprisonment of not more than ten (10) years.**
- (2) If the firearm is a machine gun or is equipped with a firearm silencer or firearm muffler, the court may sentence the person to an additional fixed term of imprisonment of not more than twenty (20) years. The additional sentence under**

this subdivision is in addition to any additional sentence imposed under section 11 of this chapter for use of a firearm in the commission of an offense.

SECTION 17. IC 35-50-2-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) The state may seek to have a person sentenced as a repeat sexual offender for a sex offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3 by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated one (1) prior unrelated felony conviction for a sex offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3.

(b) After a person has been convicted and sentenced for a felony committed after sentencing for a prior unrelated felony conviction under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3, the person has accumulated one (1) prior unrelated felony conviction. However, a conviction does not count for purposes of this subsection, if:

- (1) it has been set aside; or
- (2) it is one for which the person has been pardoned.

~~(c) The court alone shall conduct the sentencing hearing under IC 35-38-1-3.~~

(c) If the person was convicted of the offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea the court alone shall hear evidence in the enhancement hearing.

(d) A person is a repeat sexual offender if the **jury (if the hearing is by jury) or the court (if the hearing is to the court alone)** finds that the state has proved beyond a reasonable doubt that the person had accumulated one (1) prior unrelated felony conviction under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3.

(e) The court may sentence a person found to be a repeat sexual offender to an additional fixed term that is the presumptive sentence for the underlying offense. However, the additional sentence may not exceed ten (10) years.

Comment [Comment18]: SOURCE: IC 35-50-2-14; (05)PD3597.17.

APPENDIX 3

PRELIMINARY DRAFT
No. 3042
PREPARED BY
LEGISLATIVE SERVICES AGENCY
2005 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 35-38-2-3.

Synopsis: Probation revocation. Permits a judge to order execution of all or part of a probationer's suspended sentence if the probationer has violated a condition of probation. (Current law only permits the court to order execution of all of the probationer's suspended sentence.)

Effective: July 1, 2005.

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 35-38-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The court may revoke a person's probation if:

- (1) the person has violated a condition of probation during the probationary period; and
- (2) the petition to revoke probation is filed during the probationary period or before the earlier of the following:
 - (A) One (1) year after the termination of probation.
 - (B) Forty-five (45) days after the state receives notice of the violation.

(b) When a petition is filed charging a violation of a condition of probation, the court may:

- (1) order a summons to be issued to the person to appear; or
- (2) order a warrant for the person's arrest if there is a risk of the person's fleeing the jurisdiction or causing harm to others.

(c) The issuance of a summons or warrant tolls the period of probation until the final determination of the charge.

(d) The court shall conduct a hearing concerning the alleged violation. The court may admit the person to bail pending the hearing.

(e) The state must prove the violation by a preponderance of the evidence. The evidence shall be presented in open court. The person is entitled to confrontation, cross-examination, and representation by counsel.

Comment [Comment18]: SOURCE: IC 35-38-2-3; (05)PD3042.1.

(f) Probation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay.

(g) If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:

(1) continue the person on probation, with or without modifying

or enlarging the conditions;

(2) extend the person's probationary period for not more than one (1) year beyond the original probationary period; or

(3) order execution of **all or part of** the sentence that was suspended at the time of initial sentencing.

(h) If the court finds that the person has violated a condition of home detention at any time before termination of the period, and the petition to revoke probation is filed within the probationary period, the court shall:

(1) order a sanction as set forth in subsection (g); and

(2) provide credit for time served as set forth under IC 35-38-2.5-5.

(i) If the court finds that the person has violated a condition during any time before the termination of the period, and the petition is filed under subsection (a) after the probationary period has expired, the court may:

(1) reinstate the person's probationary period, with or without enlarging the conditions, if the sum of the length of the original probationary period and the reinstated probationary period does not exceed the length of the maximum sentence allowable for the offense that is the basis of the probation; or

(2) order execution of **all or part of** the sentence that was suspended at the time of the initial sentencing.

(j) If the court finds that the person has violated a condition of home detention during any time before termination of the period, and the petition is filed under subsection (a) after the probation period has expired, the court shall:

(1) order a sanction as set forth in subsection (i); and

(2) provide credit for time served as set forth under IC 35-38-2.5-5.

(k) A judgment revoking probation is a final appealable order.

(l) Failure to pay fines or costs required as a condition of probation may not be the sole basis for commitment to the department of correction.

(m) Failure to pay fees or costs assessed against a person under IC 33-40-3-6, IC 33-37-2-3(c), or IC 35-33-7-6 is not grounds for revocation of probation.

APPENDIX 4

Allows a court to order an offender on home detention to wear a monitoring device that can reliably determine the location of the offender. Changes the definition of "monitoring device" to include a device that can: (1) record information

twenty-four hours a day regarding an offender's location; (2) track the locations of where an offender has been; and (3) notify an agency if an offender violates a home detention order. Requires a probation department or community corrections program that monitors an offender or violent offender on home detention to: (1) maintain constant supervision of the offender; and (2) have staff available at all times to respond if an offender or violent offender violates a home detention order.

SECTION 1. IC 35-38-2.5-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Sec. 2.5. As used in this chapter, "contract agency" means an agency or company that contracts with a community corrections program or a probation department to monitor an offender or alleged offender using a monitoring device.

SECTION 2. IC 35-38-2.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. **(a)** As used in this chapter, "monitoring device" means an electronic device that:

Comment [Comment18]: SOURCE: IC 35-38-2.5-3; (05)PD3660.1.

(1) ~~is limited in capability to the recording~~ **can record** ~~or transmitting~~ **transmit** ~~of information~~ **twenty-four (24) hours each day** regarding an offender's:

(A) presence or absence from the offender's home; **or**

(B) **location while the offender is away from home;**

(2) is minimally intrusive upon the privacy of the offender or other persons residing in the offender's home; ~~and~~

(3) with the written consent of the offender and with the written consent of other persons residing in the home at the time an order for home detention is entered, may record or transmit:

(A) ~~a visual image;~~ **image;**

(B) ~~oral or wire~~ **an electronic** communication or any ~~auditory~~ sound; **or**

(C) information regarding the offender's activities while inside the offender's home.

(4) **can track the locations of where an offender has been; and**

(5) **can notify a probation department, a community corrections program, or a contract agency if an offender violates the terms of a home detention order.**

(b) **The term includes any device that can reliably determine the location of an offender,**

including a device that uses the global positioning system satellite service.

SECTION 3. IC 35-38-2.5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) Each probation department or community corrections program shall establish written criteria and procedures for determining whether an offender or alleged offender that the department or program supervises on home detention qualifies as a violent offender.

(b) A probation department or community corrections program shall use the criteria and procedures established under subsection (a) to establish a record keeping system that allows the department or program to quickly determine whether an offender or alleged offender who violates the terms of a home detention order is a violent offender.

(c) A probation department or a community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo home detention shall provide all law enforcement agencies (including any contract agencies) having jurisdiction in the place where the probation department or a community corrections program is located with a list of offenders and alleged offenders under home detention supervised by the probation department or the community corrections program. The list must include the following information about each offender and alleged offender:

- (1) The offender's name, any known aliases, and the location of the offender's home detention.
- (2) The crime for which the offender was convicted.
- (3) The date the offender's home detention expires.
- (4) The name, address, and telephone number of the offender's supervising probation or community corrections program officer for home detention.
- (5) An indication of whether the offender or alleged offender is a violent offender.

(d) Except as provided under section 6(1) of this chapter, a probation department or community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo home detention

shall, at the beginning of a period of home detention, set the monitoring device and surveillance equipment to minimize the possibility that the offender or alleged offender can enter another residence or structure without a violation.

(e) A probation department or community corrections program charged by a court with supervision of offenders and alleged offenders ordered to undergo home detention shall:

- (1) maintain or contract with a contract agency to maintain constant supervision of each offender; and**
- (2) have adequate staff available twenty-four (24) hours each day to respond if an offender violates the conditions of a home detention order.**

(f) A contract agency that maintains supervision of an offender under subdivision (e)(1) shall notify the contracting probation department or community corrections program within one (1) hour if an offender violates the conditions of a home detention order. However:

- (1) a community corrections advisory board, if a person is serving home detention as part of a community correction program; or**
- (2) a probation department, if a person is serving home detention as a condition of probation or bail;**

may shorten the period of time that the contract agency is allowed to give notice of a home detention order violation.

(g) A probation department or community correction program may contract with a contract agency under subdivision (e)(1) only if the contract agency can comply with subsection (f).

SECTION 4. IC 35-38-2.5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) A probation department or community corrections program charged by a court with supervision of a violent offender placed on home detention under this chapter shall:

- (1) cause a local law enforcement agency or contract agency described in section 10 of this chapter to be the**

initial agency contacted upon determining that the violent offender is in violation of a court order for home detention **order**;

(2) ~~(b)~~ A probation department or community corrections program charged by a court with supervision of a violent offender placed on home detention under this chapter shall maintain constant supervision of the violent offender using a monitoring device and surveillance equipment. The supervising entity may do this by:

~~(1)~~ **(A)** using the supervising entity's equipment and personnel; or

~~(2)~~ **(B)** contracting with an outside entity; a **contract agency**; and

(3) have adequate staff available twenty-four (24) hours each day to respond if a violent offender violates the conditions of a home detention order.

(b) A contract agency that maintains supervision of an offender under subdivision (a)(2) shall notify the contracting probation department or community corrections program within one (1) hour if an offender violates the conditions of a home detention order. However a:

(1) community corrections advisory board, if a person is serving home detention as part of a community correction program; or

(2) probation department, if a person is serving home detention as a condition of probation or bail;

may shorten the period of time that the contract agency is allowed to give notice of a home detention order violation.

(c) A probation department or community corrections program may contract with a contract agency under subdivision (a)(2) only if the contract agency can comply with subsection (b).

APPENDIX 5

PRELIMINARY DRAFT
No. 3040

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2005 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 35-38-2-1.8.

Synopsis: Modification of probation. Permits a court to hold a new probation hearing and modify a probationer's conditions of probation at any time during the probationary period. Requires the court to notify the probationer of the hearing.

Effective: July 1, 2005.

First Regular Session 114th General Assembly (2005)

A BILL FOR AN ACT to amend the Indiana Code
concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of
Indiana:*

SECTION 1. IC 35-38-2-1.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.8. (a) This section does not apply to the modification of a user's fee payment under section 1.7(b) of this chapter.**

(b) The court may hold a new probation hearing at any time during a probationer's probationary period:

(1) upon motion of the probation department or upon the court's motion; and

(2) after giving notice to the probationer.

(c) At a probation hearing described in subsection (b), the court may modify the probationer's conditions of probation. If the court modifies the probationer's conditions of probation, the court shall:

(1) specify in the record the conditions of probation; and

(2) advise the probationer that if the probationer violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

(d) The court may hold a new probation hearing under this section even if the:

(1) probationer has not violated the conditions of probation; or

(2) probation department has not filed a petition to revoke probation.

Comment [Comment21]: SOURCE: IC 35-38-2-1.8; (05)PD3040.1.

APPENDIX 6

**PRELIMINARY DRAFT
No. 3041**

**PREPARED BY
LEGISLATIVE SERVICES AGENCY
2005 GENERAL ASSEMBLY**

DIGEST

Citations Affected: IC 35-50-2-14.

Synopsis: Repeat sexual offender. Requires the jury to determine whether a person is a repeat sexual offender if the person was tried by a jury. Specifies that the court will determine whether a person is a repeat sexual offender if the person received a bench trial or pleaded guilty.

Effective: July 1, 2005.

First Regular Session 114th General Assembly (2005)

A BILL FOR AN ACT to amend the Indiana Code
concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of
Indiana:*

SECTION 1. IC 35-50-2-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) The state may seek to have a person sentenced as a repeat sexual offender for a sex offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3 by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated one (1) prior unrelated felony conviction for a sex offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3.

Comment [Comment21]: SOURCE: IC 35-50-2-14; (05)PD3041.1.

(b) After a person has been convicted and sentenced for a felony committed after sentencing for a prior unrelated felony conviction under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3, the person has accumulated one (1) prior unrelated felony conviction. However, a conviction does not count for purposes of this subsection, if:

- (1) it has been set aside; or
- (2) it is one for which the person has been pardoned.

(c) ~~The court alone shall conduct the sentencing hearing under IC 35-38-1-3.~~ **If the person was convicted of the offense in a jury trial, the jury shall reconvene to hear evidence in the repeat sexual offender hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the repeat sexual offender hearing.**

(d) A person is a repeat sexual offender if the **jury (if the hearing is by jury) or the court (if the hearing is by the court)** finds that the state has proved beyond a reasonable doubt that the person had accumulated one (1) prior unrelated felony conviction under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3.

(e) The court may sentence a person found to be a repeat sexual offender to an additional fixed term that is the presumptive sentence for the underlying offense. However, the additional sentence may not exceed ten (10) years.